BULLETIN NUMBER XIII JUNE, 1913

24

# A Collection of State Statutes Relating to Insanity in Criminal Cases

THIRD REPORT OF COMMITTEE B
OF THE
AMERICAN INSTITUTE OF CRIMINAL LAW
AND CRIMINOLOGY

Reprinted from the Journal of Criminal Law and Criminology.

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# INSANITY AND CRIMINAL RESPONSIBILITY.

EDWIN R. KEEDY.

(Report of Committee B of the Institute.[1])

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In order that intelligent proposals may be made for legislation regarding the determination of the question of insanity in criminal cases and the methods of dealing with accused or convicted persons found to be insane, it is necessary to know the statutory provisions of the different states on this subject. For this purpose a collection of such laws in all the states, including the District of Columbia, has been prepared by this committee. As these laws are very diverse and occur under such widely different titles, it is difficult to have the assurance that none have been overlooked, though a strong effort was made to include all except those which have but a remote connection with the subject or have been declared unconstitutional. The last revision or compilation of the statutes of each state and the session laws published since the date of such revision or compilation were consulted. The topics covered are the following: (1) *test of responsibility,* (2) *insanity at time of trial and method of determining this,* (3) *commitment therefor,* (4) *verdict of jury when accused person is found to have been insane at the time of the commission of the offense charged,* (5) *method of commitment in such case,* (6) *method of discharge from insane hospital.* The extent to which these topics have been included in the legislation of the different states varies greatly, in some instances being very meager. The sections of the statutes have been arranged in the order indicated above. The titles of the sections follow those of the statute books, except in cases where no such titles occur or are very long or misleading. In these cases titles have been supplied, and indicated by brackets.

## ALABAMA.

*Presumption in favor of sanity; burden and measure of proof of insanity.*—Every person over fourteen years of age charged with crime is presumed to be responsible for his acts, and the burden of proving that he is irresponsible is

cast upon the accused. The defense of insanity in all criminal prosecutions shall be clearly proved to the reasonable satisfaction of the jury.—Criminal Code of 1907, sec. 7175.

*Insanity must be specially pleaded as a defense for crime.*—When the defense of insanity is set up in any criminal prosecution it must be by special plea, interposed at the time of arraignment and entered of record upon the docket of the court, which in substance shall be, "not guilty by reason of insanity." Such plea shall not preclude the usual plea of the general issue, which shall not, however, put in issue the question of the irresponsibility of the accused by reason of this alleged insanity, this question being triable only under the special plea.

*Verdict when special plea interposed.*—If it shall appear from the evidence that the defendant did the act charged as constituting the offense, but at the time of committing the act he was insane, the jury shall render a special verdict to the effect that the defendant is not guilty by reason of insanity; if the jury do not believe from the evidence that the defendant committed the act, or if they believe from the evidence that he is not guilty upon any other ground than his alleged insanity, they must return a general verdict of not guilty; otherwise, they must return a verdict of conviction.—Criminal Code of 1907, secs. 7176 and 7177.

*Court orders to hospital defendant acquitted on account of insanity.*—When a person has escaped indictment, or been acquitted of a criminal charge on the ground of insanity, the court, being informed by the jury, or otherwise, of the fact, must carefully inquire and ascertain whether his insanity in any degree continues, and, if it does, shall order him in safe custody, and to be sent to the hospital.

*Powers of county courts and justices in misdemeanors.*—Persons charged with misdemeanors, and acquitted on the ground of insanity, may be kept in custody and sent to the hospital in the same way as persons charged with crimes; and the county courts and justices of the peace shall have the same power in reference to persons charged before them with misdemeanors, as is bestowed upon the circuit courts in the two preceding sections.—Criminal Code of 1907, secs. 7181 and 7182.

*Inquisition in certain cases of felony; proceedings.*—If any person charged with any felony be held in confinement under indictment, and the trial court shall have reasonable ground to doubt his sanity, the trial of such person for such offense shall be suspended until the jury shall inquire into the fact of such sanity, such jury to be impaneled from the regular jurors in attendance for the week or from a special venire, as the court may direct. If the jury shall find the accused sane at the time of their verdict, they shall make no other inquiry, and the trial in chief shall proceed. If they find that he is insane at that time, the court shall make an order committing him to an insane hospital, where he must remain until he is restored to his right mind. When the superintendent of the hospital shall be of opinion that such person is so restored he shall forthwith, in writing, inform the judge and sheriff of such court of the fact, whereupon such person must be remanded to prison on an order of such judge, and the criminal proceedings resumed. In no event shall such person be set at large so long as such prosecution is pending, or so long as he continues to be insane. —Criminal Code of 1907, sec. 7178.

*Inquisition upon alleged insane prisoner; further proceedings.*—If any person in confinement, under indictment, or for want of bail for good behavior, or for keeping the peace, or appearing as a witness, or in consequence of any summary conviction, or by an order of any justice, appears to be insane, the judge of any court of record of the county where he is confined must institute a careful investigation, call a respectable physician and other credible witnesses, and, if he deems it necessary, may call a jury, and for that purpose he is empowered to compel attendance of witnesses and jurors; and if it be satisfactorily proved that the person is insane, the judge may discharge him from imprisonment and order his safe custody and removal to the hospital, where he must remain until restored to his right mind; and then, if the judge shall have so directed, the superintendent must inform the judge and sheriff, whereupon the person must

be remanded to prison, and criminal proceedings be resumed, or he be otherwise discharged.—Criminal Code of 1907, sec. 7180.

*Habeas corpus for the release of insane persons confined.*—Any person confined as insane may prosecute a writ of *habeas corpus* as provided in this chapter; and if the judge, or the jury, when the petitioner demands the issues arising to be tried by a jury, shall decide at the hearing that the person is insane, such decision does not bar a second application alleging that such person has been restored to sanity.—Criminal Code of 1907, sec. 7009.

## ARIZONA.

Sections 1147-1153 of the Penal Code of 1901, prescribing the method and procedure for determining whether an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

*Acquittal on ground of insanity.*—If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the district attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the territorial insane asylum. If the jury find the defendant sane, he must be discharged.—Penal Code of 1901, sec. 982.

## ARKANSAS.

*Persons capable of committing crimes.*—A lunatic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged.

A person who becomes insane or lunatic after the commission of a crime or misdemeanor shall not be tried for the offense during the insanity or lunacy.

A person shall be considered of sound mind who is neither an idiot or a lunatic, or affected with insanity, and who hath arrived at the age of fourteen years, or before that age, if such person know the distinction between good and evil.—Kirby's Digest of the Stat., 1904, secs. 1550-1552.

[*Insanity at time of trial.*]—If the court shall be of the opinion that there are reasonable grounds to believe that the defendant is insane, all proceedings in the trial shall be postponed until the jury be impaneled to inquire whether the defendant is of unsound mind, and if the jury shall find that he is of unsound mind the court shall direct that he be kept in prison, or conveyed by the sheriff to the lunatic asylum, and there kept in custody by the officers thereof until he is restored, when he shall be returned to the sheriff, on demand, to be reconveyed by him to the jail of the county.—Kirby's Digest of the Stat., 1904, sec. 2277.

*Verdict when acquitted for insanity.*—If the defense be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact in their verdict.—Kirby's Digest of the Stat., 1904, sec. 2418.

[*Admission to asylum*].—Any person admitted to the said asylum under the provisions of this act, shall be there and then kept until restored to reason, which shall be ascertained as in case of other insane persons in said asylum.

*How discharged.*—When any person confined in said asylum under the provisions of this act shall be ascertained to be restored to reason, it shall be the duty of the said superintendent to give notice thereof to the sheriff of the county in which the indictment or presentment against such person is pending, and said sheriff shall forthwith proceed to said asylum and take such person into his custody, and convey him to the jail of said county, or hold him in custody until admitted to bail or otherwise discharged according to law.—Kirby's Digest of the Stat., 1904, secs. 4206 and 4207.

*Classification of insane persons.*—All persons found to be insane, for whom application for admission to the state insane asylum shall be made in compliance with the provisions of this chapter, shall be classified as "acute," "chronic,"

"probably incurable," or "incurable," such classifications to be determined by the duration of the disease and such complications as are known to render recovery doubtful or impossible. All cases of less than one year's duration from first recognized symptoms of insanity, shall be classified as "acute;" all cases over one year's duration shall be classified as "chronic;" all cases complicated with epilepsy, original imbecility or feeble mindedness, deformities of skull from injuries, old age or general paralysis, shall be classified as "probably incurable;" and all other cases shall be classified as "incurable;" provided, that no person of either classification, whether curable or not, and whether the imbecility or insanity be idiotic or congenital or not, shall be refused admission as long as there is unoccupied room for patients in the asylum.—Kirby's Digest of the Stat., 1904, sec. 4209.

## CALIFORNIA.

*Insane persons cannot be tried or punished.*—A person cannot be tried, adjudged to punishment, or punished for a public offense while he is insane.

*Doubts as to sanity of defendant; how determined.*—When an action is called for trial, or at any time during the trial, or when the defendant is brought up for judgment on conviction, if a doubt arise as to the sanity of the defendant, the court must order the question as to his sanity to be submitted to a jury; and the trial or the pronouncing of the judgment must be suspended until the question is determined by their verdict, and the trial jury may be discharged or retained, according to the discretion of the court, during the pendency of the issue of insanity.

*Order of trial of question of insanity.*—The trial of the question of insanity must proceed in the following order:

1. The counsel for the defendant must open the case, and offer evidence in support of the allegation of insanity;
2. The counsel for the people may then open their case and offer evidence in support thereof;
3. The parties may then respectively offer rebutting testimony only, unless the court, for good reason in furtherance of justice, permit them to offer evidence upon their original cause;
4. When the evidence is concluded, unless the case is submitted to the jury on either or both sides without argument, the counsel for the people must commence, and the defendant or his counsel may conclude the argument to the jury;
5. If the indictment be for an offense punishable with death, two counsel on each side may argue the cause to the jury, in which case they must do so alternately; in other cases the argument may be restricted to one counsel on each side;
6. The court must then charge the jury, stating to them all matters of law necessary for their information in giving their verdict.

*Verdict of the jury as to sanity, and proceedings thereon.*—If the jury finds the defendant sane, the trial must proceed, or judgment be pronounced, as the case may be. If the jury finds the defendant insane, the trial or judgment must be suspended until he becomes sane, and the court must order that he be in the meantime committed by the sheriff to a state hospital for the care and treatment of the insane, and that upon his becoming sane he be redelivered to the sheriff.

*If defendant is committed, it exonerates bail.*—The commitment of the defendant, as mentioned in the last section, exonerates his bail, or entitles a person authorized to receive the property of the defendant to a return of any money he may have deposited instead of bail.

*Defendant detained in asylum until sane.*—If the defendant is received into the state hospital he must be detained there until he becomes sane. When he becomes sane, the superintendent must certify that fact to the sheriff and district attorney of the county. The sheriff must thereupon, without delay, bring the defendant from the state hospital and place him in proper custody until he is brought to trial or judgment, as the case may be, or is legally discharged.—Annotated Penal Code, 1901, secs. 1367-1372.

*Proceedings on acquittal on ground of insanity.*—If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be

summoned from the jury list of the county to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the district attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the state insane asylum. If the jury find the defendant sane, he shall be discharged.—Supplement to Annotated Penal Code, 1902, sec. 1167, p. 41.

## COLORADO.

*Lunatics; not to be convicted for act when insane.*—A lunatic or insane person without lucid intervals shall not be found guilty of any crime or misdemeanor with which he may be charged; *provided,* the act so charged as criminal shall have been committed in the condition of insanity.

*Idiot not guilty.*—An idiot shall not be found guilty or punished for any crime or misdemeanor with which he or she may be charged.—Revised Statutes, 1908, secs. 1612-1613.

*Notice of inquest by citation; inquest of lunatic charged with crime.*—No inquest shall be had as to the lunacy of any person charged with a criminal offense until a like notice has been given to the district attorney or other officer charged by law to prosecute such offense.—Revised Statutes, 1908, sec. 4128 (portion of section).

*Lunacy after crime committed; after judgment; inquest.*—A person that becomes lunatic or insane after the commission of a crime or misdemeanor ought not to be tried for the offense during the continuance of the lunacy or insanity. If, after verdict of guilty and before judgment pronounced, such person becomes lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue, and if after judgment and before execution of the sentence, such person becomes lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of such person from the insanity or lunacy. In all these cases it shall be the duty of the court to impanel a jury to try the question whether the accused be at the time of impaneling insane or lunatic.—Revised Statutes of 1908, sec. 1614.

*Discharge of person restored to reason.*—If any person confined in the state insane asylum shall be restored to reason, the superintendent thereof shall discharge such person from said confinement and shall forthwith transmit to the judge of the county court, by which said patient was adjudged insane, a notice in writing setting forth that such lunatic or insane person has been restored to reason, and has been discharged and the said superintendent shall have the further power to issue a probationary discharge whenever he believes the same to be for the best interest of any patient, under his control.—Revised Statutes, 1908, sec. 4130 (portion of section).

## CONNECTICUT.

*Examination of accused who appear to be insane.*—When any person committed for trial to the county jail on binding over process, bench warrant, or appeal, shall, at the time of such commitment, or thereafter and before trial, appear to be insane, the sheriff of the county in which said jail is located may make application to a judge of the superior court, and, after hearing upon said application, notice of said hearing having been given to the state's attorney, said judge may, if it appear to him to be advisable, appoint three reputable physicians to examine as to the mental condition of the person so committed; and upon the return to said judge of a certificate by said physicians, stating the insanity of said person, said sheriff shall, upon the order of said judge, transfer said person so committed to the Connecticut hospital for the insane at Middletown, in this state, for confinement, support, and treatment, until the time of his trial. The expense of such examination, confinement, support, and treatment, shall be taxed as a part of the costs in the prosecution against said person, and paid as costs in criminal prosecutions in the superior court.

*Disposition of accused acquitted on the ground of insanity.*—Any superior

court, criminal court of common pleas, city court, or police court in this state, before which any person shall be tried on any criminal charge, and acquitted on the ground of insanity or dementia, may order such person to be confined in the Connecticut hospital for the insane for such time as such court shall direct, unless some person shall undertake before said court, and give bond to the state conditioned, to confine such person in such manner as such court shall order; and said court shall appoint an overseer to such person, if he have any estate, with the same powers and duties as conservators appointed by courts of probate, such overseer giving suitable bond to the state, conditioned for the faithful performance of his trust; and if such person have no estate, and belongs to any town in this state, the expense of his confinement, support, and treatment shall be paid by such town and the state, in the same manner as is by law provided in the case of pauper patients committed by courts of probate; and if such person have no estate and does not belong to any town in this state, such expense shall be paid by the state.

*Release of person sentenced under preceding section.*—Any person who has been tried on any criminal charge, and acquitted on the ground of insanity or dementia, and confined in the Connecticut hospital for the insane, may petition, or the officers of said institution may petition, the superior court of the county in which he is confined for his enlargement, and the petition shall be served like civil process on the selectmen of the town to which he belongs, and upon the person, if any, upon whom the offense was charged to have been committed, and upon the state's attorney of the county in which the trial was had, and said court shall make such order as to his disposal as it shall deem proper, and said state's attorney shall appear and represent the state on such application; and if such person so confined shall be unable to defray the expenses of said petition, the court before which the same is heard may tax the same against the state as in criminal cases.

*Disposition of insane person upon expiration of term.*—When any person shall have been tried on any criminal charge and acquitted on the ground of insanity or dementia, and shall have been confined in the Connecticut hospital for the insane for any specific term by the order of the court before which such trial was had, and shall, at the expiration of such term, still be suffering from insanity or dementia, the superintendent of said hospital shall certify said facts to the state's attorney for the county wherein such trial was had, and said state's attorney shall thereupon procure from said court, and said court is hereby authorized and empowered to issue an order for the further confinement of such person in said hospital until he recovers from such insanity or dementia, and the clerk of said court shall thereupon transmit to said superintendent a new warrant of commitment based upon said order; the expense of such further confinement, support, and treatment shall be paid out of the estate of such insane person, or, if he have no estate, such expense shall be paid by the town of which such person belongs; and if he belongs to no town in this state such expense shall be paid by the state.—General Statutes (Revision of 1902), secs. 1472-1475.

*Petition for release of person acquitted as insane.*—Any person who has been tried on any criminal charge, and acquitted on the ground of insanity or dementia, and confined in the Connecticut hospital for the insane, may petition, or the officers of said institution may petition, the superior court of the county in which he is confined for his release, and the petition shall be served like civil process on the selectmen of the town to which he belongs, and upon the person, if any, upon whom the offense was charged to have been committed, and upon the state's attorney of the county in which the trial was had, and said court shall make such order as to his disposal as it shall deem proper; and said state's attorney shall appear and be heard on such application, and if such person so confined shall be unable to defray the expenses of such petition, the court before which the same is heard may tax the expenses of such petition against the state, as in criminal cases.—General Statutes, 1902, sec. 2780.

*Insane persons entitled to writ of habeas corpus.*—All insane persons confined in an asylum in this state shall be entitled to the benefit of the writ of *habeas corpus,* and the question of insanity shall be determined by the court

or judge issuing such writ, and, if the court or judge before whom such case is brought shall decide that the person is insane, such decision shall be no bar to the issuing of such writ a second time, if it shall be claimed that such person has been restored to reason. Said writ may be applied for by said insane person or on his behalf by any relative, friend, or person interested in his welfare.

*Persons charged with crime not affected.*—The foregoing provisions of this title shall not extend to nor affect in any way the cases of persons convicted of or charged with crime.—General Statutes (Revision of 1902), secs. 2760-2761.

## DELAWARE

*An act in relation to insane persons.*—If upon the trial of any person upon any indictment in the court of oyer and terminer, or in the court of general sessions of the peace and jail delivery of this state, the defense of insanity shall be made and established to the satisfaction of the jury impaneled on said trial, and the fact charged shall be proved, it shall be the duty of the jury to return a verdict of "not guilty by reason of insanity," and upon the rendition of such verdict, the court before which the issue shall have been tried may, upon motion of the attorney-general, order that the person so acquitted shall forthwith be committed by the sheriff to the keeper of the almshouse of the county wherein the case was tried, or of the county of the residence of said insane person; or the court may order such person to be placed at any lunatic asylum or institution for insane persons in the United States. For this purpose the said court may appoint a trustee, whose duty it shall be to contract with any such asylum or institution for the admission and support of such insane person. The expenses of the removal of such insane person, and of his admission into and support at such asylum or institution, shall be borne by the trustee of the poor of the county where the act charged was committed, or of the county of such insane person's residence; but if any such insane person shall have any real or personal estate, said trustee of the poor may have for the expenses and charges so incurred as aforesaid, the same remedy as is provided in section 22, of chapter 48, of the Revised Statutes of this State in the case of insane persons supported in the county almshouse.

The court of general sessions of the peace and jail delivery of the county wherein such case shall have been tried may order that such insane person charged and acquitted as aforesaid shall be set at large whenever they shall be satisfied that the public safety will not be thereby endangered, or may order such person to be removed from any such asylum or institution to the almshouse of the county where he resided at the time of the commission of the act charged in the indictment, or of the county where the act charged was committed.—Revised Code of 1852 as amended 1893, chap. 397.

## DISTRICT OF COLUMBIA

*Insane criminals.*—When any person tried upon an indictment or information for an offense is acquitted on the sole ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict; and whenever a person is indicted or is charged by an information for an offense and before trial or after a verdict of guilty *prima facie* evidence is submitted to the court that the accused is then insane, the court may cause a jury to be impaneled from the jurors then in attendance on the court or, if the regular jurors have been discharged, may cause a sufficient number of jurors to be drawn to inquire into the insanity of the accused, and said inquiry shall be conducted in the presence and under the direction of the court. If the jury shall find the accused to be then insane, or if an accused person shall be acquitted by the jury solely on the ground of insanity, the court may certify the fact to the Secretary of the Interior, who may order such person to be confined in the hospital for the insane, and said person and his estate shall be charged with the expense of his support in said hospital. The person whose sanity is in question shall be entitled to his bill of exceptions and an appeal, as in other cases.—Code of Law, 1910, sec. 927.

## FLORIDA

*Acquitted for cause of insanity.*—When a person tried for an offense shall be acquitted by the jury for the cause of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause, and thereupon, if the discharge or going at large of such insane person shall be considered by the court manifestly dangerous to the peace and safety of the people, the court shall order him to be committed to jail or otherwise to be cared for as an insane person, or may give him into the care of his friends, on their giving satisfactory security for the proper care and protection of such person; otherwise he shall be discharged.—General Statutes of 1906, sec. 3992.

## GEORGIA

*Persons who are considered of sound mind.*—A person shall be considered of sound mind who is neither an idiot, a lunatic, nor afflicted by insanity, or who has arrived at the age of fourteen years, or before that age if such person know the distinction between good and evil.—Code of 1911, vol. ii, sec. 33.

*Lunatics.*—A lunatic or person insane, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged: Provided, the act so charged as criminal was committed in the condition of such lunacy or insanity; but if a lunatic has lucid intervals of understanding, he shall answer for what he does in those intervals as if he had no deficiency. —Code of 1911, vol. ii, sec. 35.

*Insanity at trial.*—No lunatic, or person afflicted with insanity, shall be tried, or put upon his trial, for any offense during the time he is afflicted with such lunacy or insanity, which shall be tried in the manner hereinbefore pointed out where the plea of insanity at the time of trial is filed, and, on being found true, the prisoner shall be disposed of in like manner.—Code of 1911, vol. ii, sec. 978.

*Plea of insanity, how tried.*—Whenever the plea of insanity is filed, it shall be the duty of the court to cause the issue on that plea to be first tried by a special jury, and if found to be true, the court shall order the defendant to be delivered to the superintendent of the sanitarium, there to remain until discharged in the manner prescribed by law.

*Criminals acquitted, how dealt with.*—When a person who has been acquitted of a capital crime, on the ground of insanity, is committed to the sanitarium, he shall not be discharged thence, except by special act of the legislature. If the crime is not capital, he shall be discharged by warrant or order from the governor. If sentence is suspended on the ground of insanity, upon restoration to sanity the superintendent shall certify the fact to the presiding judge of the court where he was convicted.—Code of 1911, vol. ii, secs. 976 and 977.

## IDAHO

Sections 8194-8200 of the Revised Code, 1908, prescribing the method and procedure for determining whether an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

*Forms of general verdict.*—When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity."—Revised Code of 1908, sec. 7919 (portion of section).

*Acquittal for insanity—commitment to asylum.*—If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the prosecuting attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the state insane asylum. If the jury find the defendant sane, he shall be discharged.—Revised Code of 1908, sec. 7934.

## ILLINOIS

*Insanity.*—A lunitic or insane person, without lucid intervals, shall not be found guilty of any crime or misdemeanor with which he may be charged: *Provided,* the act so charged as criminal shall have been committed in the condition of insanity.—Revised Statutes, 1909, chap. 38, part of sec. 284.

*Becoming insane.*—A person that becomes lunatic or insane after the commission of a crime or misdemeanor shall not be tried for the offense during the continuance of the lunacy or insanity. If, after the verdict of guilty, and before judgment pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. And if, after judgment and before execution of the sentence, such person become lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of said person from the insanity or lunacy. In all of these cases, it shall be the duty of the court to impanel a jury to try the question whether the accused be, at the time of impaneling, insane or lunatic. —Revised Statutes, 1909, ch. 38, sec. 285.

*Verdict and commitment.*—If, upon the trial of a person charged with crime, it shall appear from the evidence that the act was committed as charged, but that, at the time of committing the same, the person so charged was lunatic or insane, the jury shall so find by their verdict, and by their verdict shall further find whether such person has or has not entirely and permanently recovered from such lunacy or insanity; and in case the jury shall find such person has not entirely and permanently recovered from such lunacy or insanity, the court shall cause such person to be taken to a state hospital for the insane, and there kept in safety until he shall have fully and permanently recovered from such lunacy or insanity; but in case the jury shall find by their verdict that such person has entirely and permanently recovered from such lunacy or insanity, he shall be discharged from custody.—Revised Statutes, 1909, chap. 38, part of sec. 284.

*Judge may order insane murderer, etc., to the asylum.*—At any time after the said Illinois asylum for insane criminals shall be opened, for the reception of patients, when a person shall be acquitted on trial of the crime of murder, attempt at murder, rape, attempt at rape, highway robbery or arson, on the ground of insanity, the judge of the court in which such trial is had shall order his safe custody and removal to such asylum, where he shall remain until restored to his right mind and be adjudged by the medical superintendent thereof, and the board of commissioners of public charities a fit subject to be discharged.—Revised Statutes, 1909, chap. 23, sec. 87.

*Entitled to habeas corpus.*—Every person confined as insane shall be entitled to the benefit of the writ of *habeas corpus,* and the question of insanity shall be decided at the hearing, and if the judge shall decide that the person is insane such decision shall be no bar to the issuing of the writ a second time whenever it shall be alleged that such person has been restored to reason; and if said person shall be adjudged sane, on presentation of a certified copy of said judgment to the county court where the inquest was had, such court shall rescind and set aside the judgment of insanity.—Revised Statutes, 1909, ch. 85, sec. 24.

*Not to apply to persons in custody on criminal charge.*—Nothing in this act shall be construed to apply to insane persons, or persons supposed to be insane, who are in custody on a criminal charge.—Revised Statutes, 1909, ch. 85, sec. 30.

## INDIANA

*Insanity defense—sentence.*—After the passage of this act, if upon the trial of any male person accused of a felony the defense of insanity is interposed, whether upon a special plea or a general plea of not guilty, the court or jury trying said cause shall make a finding both as to the sanity of said defendant at the time so claimed and as to whether he committed the act as charged. And if it shall be found in favor of said defendant on such plea of insanity but against him as to the commission of the act as charged, he shall upon order of the court be committed to and confined in the Indiana colony for the insane criminals in like manner and on such conditions and for such terms as is now

provided for by law for the confinement of insane criminals in a state hospital for the insane.—Acts of 1909, chap. 87, sec. 16½.

[*Habeas corpus*]—*Who may have writ.*—Every person restrained of his liberty under any pretense whatever, may prosecute a writ of *habeas corpus,* to inquire into the cause of the restraint, and shall be delivered therefrom when illegal.—Burns' Revised Statutes, 1901, sec. 1120.

*Habeas corpus.*—Any person committed as insane may apply to the proper authorities for a writ of *habeas corpus,* and the question of insanity shall be decided at the hearing. An adverse decision shall not operate as a bar to the issuance of another writ: *Provided, however,* That writs of *habeas corpus* shall not issue oftener than once in every period of three months in such cases.—Burns' Revised Statutes, 1901, sec. 3239.

## IOWA

*Proceedings suspended.*—If a defendant appears in any stage of the trial of a criminal prosecution, and a reasonable doubt arises as to his sanity, further proceedings must be suspended and a trial had upon that question.

*Trial.*—Such trial shall be conducted in all respects, so far as may be, as the prosecution itself would be, except the defendant shall hold the burden of proof, and first offer his evidence and have the opening and closing argument.

*Discharge or commitment.*—If the accused shall be found insane, no further proceedings shall be taken under the indictment until his reason is restored, and, if his discharge will endanger the public peace or safety, the court must order him committed to the department for the criminal insane at Anamosa until he becomes sane; but if found sane, the trial upon the indictment shall proceed, and the question of the then insanity of the accused cannot be raised therein.

*Return to custody.*—If the accused is committed to the department for the criminal insane, as soon as he becomes mentally restored, the person in charge shall at once give notice to the sheriff and county attorney of the proper county of such fact, and the sheriff, without delay, must receive and hold him in custody until he is brought to trial or judgment, as the case may be, or is legally discharged, the expense for conveying and returning him or any other, to be paid in the first instance by the county from which he is sent, but such county may recover the same from his estate, or a relative, or another county or municipal body bound to provide for or maintain him elsewhere, and the sheriff shall be allowed for his services the same fees as are allowed for conveying convicts to the penitentiary.—Code of 1897, secs. 5540-5543.

*Acquittal on ground of insanity.*—If the defense is insanity of the defendant, the jury must be instructed, if it acquits him on that ground, to state that fact in its verdict. The court may thereupon, if the defendant is in custody, and his discharge is found to be dangerous to the public peace and safety, order him committed to the insane hospital, or retained in custody, until he becomes sane.—Code of 1897, sec. 5414.

*Discharge from hospital.*—On the application of the relations or immediate friends of any patient in the hospital who is not cured, and who cannot be safely allowed to go at liberty, the commissioners of the county where such patient belongs, on making provisions for the care of such patient within the county as in other cases, may authorize his discharge therefrom; but no patient who may be under criminal charge or conviction shall be discharged without the order of the district court or judge, and notice to the county attorney of the proper county.—Code of 1897, sec. 2276.

*Habeas corpus.*—All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus,* and the question of insanity shall be decided at the hearing. If the judge shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person has been restored to reason.—Code of 1897, sec. 2360.

## KANSAS

[*Insanity at time of trial*].—Whenever any person under indictment or infor-

mation, and before or during the trial thereon, and before verdict is rendered, shall be found by the court in which such indictment or information is filed, or by a commission or another jury impaneled for the purpose of trying such question, to be insane, an idiot or an imbecile and unable to comprehend his position, and to make his defense, the court shall forthwith commit him to the state asylum for the dangerous insane for safe keeping and treatment; and such person shall be received and cared for at the said institution until he shall recover, when he shall be returned to the court from which he was received to be placed on trial upon said indictment or information.—Laws of Kansas, 1911, c. 299, s. 4.

[*Insanity at time of commission of wrongful oct*].—Whenever during the trial of any person on an indictment, or information, and evidence is introduced to prove that he was insane, an idiot or imbecile or of unsound mind at the time of the commission of the offense and such person shall be found to have been at the date of the offense alleged in said indictment or information, insane, an idiot, or an imbecile, and is acquitted on that ground, the jury or the court, as the case may be, shall so state in the verdict and in said case it shall be the duty of the jury to pass specially on the question of the sanity of the defendant, and the court shall thereupon, forthwith commit such person to the state asylum for the dangerous insane for safe keeping and treatment, and such person shall be received and cared for at said institution. No such person so acquitted shall be liberated therefrom, except upon the order of the court committing him thereto and until the superintendent of the said asylum for the dangerous insane shall certify in writing to such committing court that in his opinion such person is wholly recovered and that no person will be in danger by his discharge.—Laws of Kansas, 1911, c. 299, sec. 5.

## KENTUCKY

*Trial of sanity of defendant—proceedings if insane.*—If the court shall be of opinion that there are reasonable grounds to believe that the defendant is insane, all proceedings in the trial shall be postponed until a jury be impaneled to inquire whether the defendant is of unsound mind, and if the jury find that he is of unsound mind, the court shall direct that he be kept in prison or conveyed by the sheriff to the nearest lunatic asylum, and there kept in custody by the officers thereof until he be restored, when he shall be returned to the sheriff on demand, to be reconveyed by him to the jail of the county.—Criminal Code of Practice, 1900, sec. 156.

*Verdict ond proceedings on plea of insanity.*—If the defense be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact in their verdict, and thereupon if the court, after hearing any testimony offered by the commonwealth or the defendant, be satisfied that he is insane at the time the verdict is rendered, it may order him to be taken to a lunatic asylum.—Criminal Code of Practice, 1900, sec. 268.

NOTE: "Asylum" as a term of designation for institutions for the care of the insane has been changed to "hospital."—Acts of 1912, ch. 85.

## LOUISIANA.

*Plea of insanity.*—Whenever insanity shall be relied upon either as a defense or as a reason for defendant's not being presently tried, such insanity shall be set up as a separate and special plea, and shall be filed, tried and disposed of prior to any trial of the plea of not guilty, and no evidence of insanity shall be admissible upon the trial of the plea of not guilty.

[*Report of commission*].—Whenever any plea of insanity shall have been filed, the presiding judge shall at once notify in writing the coroner of the parish, the superintendent of the insane asylum at Jackson, and the superintendent of the insane asylum at Pineville. The said coroner and the said superintendents shall together form a commission of lunacy to inquire into the sanity of accused; provided that each of said superintendents may designate and require to act in his place on said commission any physician in the regular employ of the asylum. The commissioners, as soon as practicable after said notification, shall meet at the parish-seat, and proceed with the investigation into the sanity of the accused, and, for that purpose, shall have the right of

free access to him at all reasonable times and shall have full power and authority to summon witnesses and to enforce their attendance. The findings of the commission or of a majority of its members shall, upon being filed in court, constitute the report of the commission of lunacy. If said report be that the accused is presently insane, or was insane at the time of the commision of the crime, he shall forthwith be committed to the asylum for the criminal insane, there to remain until discharged in due course of law. But if the report be that the accused is presently sane and was sane at the time of the commission of the crime, the trial of the plea of insanity shall be proceeded with as provided in this chapter. The commissioners shall serve without pay, but all the expenses incurred by them and all costs of conducting said investigation shall be paid by the parish and taxed as costs, in the same way as other criminal expenses.

[*Trial of plea*].—Every plea of insanity shall be triable by the judge without a jury, or by a jury of five, or by a jury of twelve, according as the charge in the indictment is triable, and the same number of jurors concurring shall be necessary to the finding of a verdict on this plea as would be necessary to a verdict on the charge in the indictment.

[*Finding and commitment*].—If upon the trial of the plea of present insanity the judge or the jury, as the case may be, shall find that the defendant is presently sane, he shall be committed to an asylum for the criminal insane, there to await trial until such time as his reason shall have been restored; provided that the district attorney having charge of the prosecution, whenever he believes the defendant no longer insane, may have the question of insanity again determined in the same manner in which it was originally determined.

[*Finding and Commitment*].—If upon the trial of the plea of insanity as a defense, the judge or the jury, as the case may be, shall find that the defendant was insane at the time of the commission of the crime, he shall be committed to an asylum for the criminal insane, there to remain until discharged in due course of law; provided that no person committed under the provisions of this Article shall be released otherwise than as pointed out in the next succeeding Article.

[*Discharge from asylum*].—Whenever it shall be alleged that any person committed to an asylum for the criminal insane, because insane at the time of the commission of the crime, has regained his reason, a rule to show why such person should not be released from said asylum shall be taken upon and tried contradictorily with the district attorney of the parish from which such person shall have been committed, which rule shall be tried by the judge, or by a jury of five, or by a jury of twelve, according as the charge in the indictment is triable, and the same number of jurors shall be necessary to the finding of sanity as would be necessary to a verdict on the charge in the indictment.

[*Review*].—No ruling of the court made on the trial of any plea of insanity shall, before sentence, be reviewable by any other court, either under its appellate or supervisory powers.—Proposed Code of Criminal Procedure, 1910, arts. 292-298.

*Authority of courts, when insanity is pleaded.*—Whenever any person arrested to answer for any crime or misdemeanor, before any court of this state, shall be acquitted thereof by the jury, or shall not be indicted by the grand jury, by reason of the insanity or mental derangement of such person, and the discharge and going at large of such person shall be deemed by the court to be dangerous to the safety of the citizens or to the peace of the state, the court is authorized and empowered to commit such person to the State Insane Hospital or any similar institution in any parish within the jurisdiction of the court, there to be detained until he be restored to his right mind, or otherwise delivered by due course of law.

[*Duty of jury, when insanity is reason for acquittal*].—Whenever the jury, upon general issue of not guilty, shall acquit any person for the cause aforesaid, it shall be their duty, in giving their verdict of not guilty, to state that it was for such cause.—Revised Statutes, 1904, secs. 993 and 995.

## MAINE.

*When a person, committed to a jail on a criminal charge pleads insanity, proceedings.*—When a person is indicted for an offense, or is committed to jail on a charge thereof by a trial justice, or judge of a police or municipal court, any justice of the court before which he is to be tried, if a plea of insanity is made in court, or he is notified that it will be made, may, in vacation or term time, order such person into the care of the superintendent of either insane hospital, to be detained and observed by him until further order of court, that the truth or falsity of the plea may be ascertained. The superintendent of the hospital to which such person is committed shall, within the first three days of the term next after such commitment and within the first three days of each subsequent term so long as such person remains in his care, report to the judge of the court before which such person is to be tried, whether his longer detention is required for purposes of observation.

*When grand jury omit to indict, or traverse jury acquit, on account of insanity of the accused, they shall so certify to court—how court shall dispose of such accused.*—When the grand jury omit to find an indictment against any person arrested to answer for an offense, by reason of his insanity, they shall certify that fact to the court; and when a traverse jury, for the same reason, acquit any person indicted, they shall state that fact to the court when they return their verdict; and the court, by a precept stating the fact of insanity, may commit him to the insane department of the state prison or to either insane hospital; and any person so committed shall be discharged by the court having jurisdiction of the case only on satisfactory proof that his discharge will not endanger the peace and safety of the community; and when such person so discharged is on satisfactory proof again found insane and dangerous, any justice of the supreme judicial court may, by a precept stating the fact of his insanity, recommit him to the insane department of the state prison, or to either insane hospital.

*How, and by whom, such person, so committed to the hospital, may be discharged—bond.*—Any person so committed to an insane hospital may be discharged by any justice of the supreme judicial court, in term time or vacation, on satisfactory proof that his discharge will not endanger the peace and safety of the community; or such justice may, on application, commit him to the custody of any friend who will give bond to the judge of probate for the county of Kennebec, if such commitment was to the insane hospital at Augusta, or to the judge of probate for the county of Penobscot, if such commitment was to the insane hospital at Bangor, with sufficient sureties, approved by said judge of probate, conditioned for the safe keeping of such insane person, and the payment of all damages which any person may sustain by his acts. And when, on satisfactory proof, he is again found insane and dangerous, any justice of the supreme judicial court may, by a precept stating the fact of his insanity, recommit him to the insane hospital from which he was discharged.

*Support at hospital.*—The person so committed shall be there supported at his own expense, if he has sufficient means; otherwise, at the expense of the state.—Revised Statutes, 1903, c. 138, secs. 1-4.

*Inmates of jails and persons under indictment may be committed to insane hospital.*—Any inmates of county jails and persons under indictment becoming insane before final conviction may be committed to either insane hospital by any judge of the supreme judicial court, or judge of the superior court in the county where such person is to be tried, or the case is pending for observation, under such limitations as such judge may direct.—Laws of 1905, c. 104, sec. 8.

## MARYLAND.

[*Verdict in case of plea of insanity*].—When any person indicted for a crime or misdemeanor shall allege insanity or lunacy in his defense, the jury impanelled to try such person shall find by their verdict whether such person was, at the time of the commission of the offense, or still is insane, lunatic, or otherwise.

[*Commitment*].—If the jury find by their verdict that such person was at the time of committing the offense and then is insane or lunatic, the court

before which trial was had shall cause such person to be sent to the almshouse of the county or city in which such person resided at the time of the commission of such act, or to a hospital, or some other place better suited in the judgment of the court to the condition of such prisoner, there to be confined until he shall have recovered his reason and be discharged by due course of law. And any judge of the circuit court for any county where such person is detained or of the supreme bench of Baltimore city, as the case may be, may, upon *habeas corpus* proceedings, make any order, absolute or conditional, for the permanent or temporary discharge of the person upon satisfactory proof of permanent or temporary recovery.

[*Commitment when no indictment found*].—Where any person arrested for improper or disorderly conduct, or charged with any crime, offense or misdemeanor against whom no indictment has been found shall appear to the court or be alleged to be a lunatic or insane, the court shall cause a jury of twelve good and lawful men to be impanelled forthwith and shall charge said jury to inquire whether such person was at the time of the commission of the act complained of insane or lunatic and still is so; and if such jury shall find such person was, at the time of the commission of such act, insane or lunatic and still is so, the court shall direct such person to be confined, as directed in the preceding section, at the expense of the county or city, as the case may be, until he shall have recovered and be discharged by due course of law.—Annotated Code, 1911, art. 59, secs. 4-6.

[*Release on habeas corpus at instance of lunacy commission*].—If in their judgment any person confined in any institution in this state as insane be not insane, the commission may, at any time, bring the matter to the attention of the state's attorney of Baltimore city, or the state's attorney of any of the respective counties of the state, whose duty it shall be to apply to the proper tribunal for the writ of *habeas corpus*, to the end that proper inquiry and investigation may be had at once as to the mental condition of such person; and if the court shall be of the opinion that such person is not insane, then the court shall discharge such person; but if the court shall determine that such person is insane, then the court shall order that such person be returned to the institution from which he has been taken under said writ of *habeas corpus*.—Annotated Code, 1911, art. 59, sec. 20.

## MASSACHUSETTS.

*Commitment of persons under indictment to a state insane hospital.*—If a person under complaint or indictment for any crime is, at the time appointed for trial or sentence, or at any time prior thereto, found by the court to be insane or in such mental condition that his commitment to a hospital for the insane is necessary for the proper care or observation of such person pending the determination of his insanity, the court may commit him to a state hospital for the insane under such limitations as it may order. The court may, in its discretion, employ one or more experts in insanity, or other physicians qualified as provided in section thirty-two, to examine the defendant, and all reasonable expenses incurred shall be audited and paid as in the case of other court expenses. A copy of the complaint or indictment and of the medical certificates attested by the clerk shall be delivered with such person in accordance with the provisions of the said section. If a person so removed is in the opinion of the trustees and superintendent of the hospital restored to sanity, he shall forthwith be returned to the jail or custody from which he was removed, where he shall be held in accordance with the terms of the process by which he was originally committed or confined.

*Commitment of person acquitted of murder, etc., by reason of insanity.*—If a person who is indicted for murder or manslaughter is acquitted by the jury by reason of insanity, the court shall order him to be committed to a state hospital for the insane during his natural life, and he may be discharged therefrom by the governor, with the advice and consent of the council, when he is satisfied after an investigation by the state board of insanity that such person may be discharged without danger to others.—Acts of 1909, chap. 504, secs. 103 and 104.

[*Accused person found insone by grond jury*].—When any person held in prison on a charge of having committed an indictable offense, shall not be indicted by the grand jury by reason of insanity, such jury shall certify that fact to the court; and thereupon, if the discharge or going at large of such insane person shall be deemed manifestly dangerous to the peace and safety of the community, the court may order him to be retained in prison until the further order of the court, otherwise he shall be discharged.—Compiled Laws, 1897, sec. 11895.

*When prisoner ocquitted by reoson of insonity.*—When any prisoner indicted for an offense shall, on trial, be acquitted by the jury by reason of insanity, the jury in giving their verdict of not guilty, shall state that it was given for such cause; and thereupon, if the discharge or going at large of such insane person shall be considered manifestly dangerous to the peace and safety of the community, the court may order him to be committed to prison, there to be kept until the further order of the court; otherwise he shall be discharged.—Compiled Laws, 1897, sec. 11953.

*When court may order persons sent to stote osylum.*—When a person accused of the crime of murder, attempt at murder, rape, attempt at rape, incest, abduction, highway robbery or arson, or attempt to do great bodily harm, shall appear to be insane, or shall have escaped indictment upon the grounds of insanity or shall have been acquitted upon trial upon the grounds of insanity, the court, being certified by the jury or otherwise of the fact, shall carefully inquire and ascertain whether his insanity in any degree continues, and if it does, shall order such person into safe custody and to be sent to the state asylum. If any person in confinement under indictment for the crime of arson, or murder, or attempt at murder, rape, or attempt at rape, or incest, or abduction, or highway robbery, or assault to do great bodily harm, shall appear to be insane, the judge of the circuit court of the county where he is confined shall institute a careful investigation. He shall call two or more reputable physicians and other credible witnesses, and the prosecuting attorney, to aid in the examination, and if it be deemed necessary to call a jury for that purpose, is fully empowered to compel the attendance of witnesses and jurors. If it is satisfactorily proved that such person is insane, said judge may discharge such person from imprisonment and order his safe custody and removal to the state asylum, where such person shall remain until restored to his right mind, and then, if the said judge shall have so directed, the superintendent of said asylum shall inform the said judge and prosecuting attorney, so that the person so confined may within sixty days thereafter be remanded to prison and criminal proceedings be resumed, or he be otherwise discharged. If any such person be sent to said asylum, the county from which he is sent shall defray all expenses of such person while at the asylum for a period of two years, and the expense of returning home to such county if his discharge is effected during such period. If he shall not be discharged from the said asylum until after his transfer to the state shall have been effected, under the provisions of a subsequent section, the expenses of his return to said county shall be paid by the state of Michigan. The county or state may recover the amount so paid from the person's own estate, if he have any, or from any relative, town, city or county that would have been bound under existing laws to provide for and maintain him elsewhere.—Public Acts, 1905, sec. 19, p. 344.

*Insane entitled to writ of habeos corpus.*—Anyone in custody as an insane person in any asylum, home or retreat, is entitled to a writ of *hobeos corpus,* upon a proper petition to the circuit court of the county in which said asylum, home or retreat is situated, made by him or some friend in his behalf. Upon the return of such writ, the fact of his sanity shall be inquired into and determined. The medical history of the patient, as it appears in the books of the asylum, home or retreat, shall be given in evidence, and the superintendent or medical officer in charge of the institution wherein such person is held in custody, and any other proper person, shall be sworn touching the mental condition of such person.—Public Acts, 1903, sec. 35, page 339.

## MINNESOTA.

*Criminal responsibility of insane persons.*—No person shall be tried, sentenced or punished for any crime while in a state of idiocy, imbecility, lunacy or insanity, so as to be incapable of understanding the proceedings or making a defense; but he shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act he was laboring under such a defect of reason, from one of said causes, as not to know the nature of his act, or that it was wrong.—Revised Laws, 1905, sec. 4756.

*Insanity, etc., of defendant.*—Whenever any person under indictment or information, and before or during the trial thereon and before verdict is rendered, shall be found to be insane, an idiot, or an imbecile, the court in which such indictment or information is filed, shall forthwith commit him to the proper state hospital or asylum for safe keeping and treatment; and whenever at such time any such person shall, in addition, be found to have homicidal tendencies, such court shall forthwith commit him to the asylum for the dangerous insane for safe keeping and treatment; and in either case such person shall be received and cared for at the institution to which he is thus committed until he shall recover, when he shall be returned to the court from which he was received to be placed on trial upon said indictment or information.

*Acquitted on ground of insanity.*—Whenever during the trial of any person on an indictment, or information, such person shall be found to have been, at the date of the offense alleged in said indictment, insane, an idiot, or an imbecile, and is acquitted on that ground, the jury or the court, as the case may be, shall so state in the verdict, or upon the minutes, and the court shall thereupon, forthwith, commit such person to the proper state hospital or asylum for safe keeping and treatment; and whenever in the opinion of such jury or court such person, at said date, had homicidal tendencies, the same shall also be stated in said verdict, or upon said minutes, and said court shall thereupon forthwith commit such person to the hospital for the dangerous insane for safe keeping and treatment; and in either case such person shall be received and cared for at said hospital or asylum to which he is thus committed. No such person so acquitted shall be liberated therefrom, except upon the order of the court committing him thereto and until the superintendent of the hospital or asylum where such person is confined shall certify in writing to such committing court that, in his opinion, such person is wholly recovered and that no person will be endangered by his discharge. *Provided,* that nothing herein shall be construed as preventing the transfer of any person from one institution to another by the order of the board of control, as it may deem necessary.—Laws of 1907, c. 358, sec. 1. (Amendments of secs. 5375 and 5376 of Revised Laws, 1905).

## MISSISSIPPI.

*Insane person charged with crime.*—When a prisoner shall be brought before any conservator of the peace, charged with the commission of an offense, and, in the course of the investigation, it shall appear that the prisoner was insane when the offense was committed, and still is insane, he shall not be discharged, but the conservator of the peace shall remand the prisoner to custody, and forthwith report the case to the chancellor or clerk of the chancery court, whose duty it shall be to proceed with the case according to the law relating to persons of unsound mind.—Code of 1906, sec. 1538.

*Writ de lunatico inquirendo.*—The chancery courts have jurisdiction of writs of lunacy, to be exercised by the clerks at any time, subject to the approval of the court. Any relative of a lunatic or insane person may procure him to be so adjudged; but if the relations and friends of any lunatic or insane person shall neglect or refuse to place him in an insane hospital, and shall permit him to go at large, the clerk of the chancery court shall, on the application, in writing and under oath, of any citizen, direct the sheriff, by writ of lunacy, to summon the alleged lunatic or insane person to contest the application, and six freeholders to make inquiry thereof, on oath, and the result of the inquisition to return to the clerk. The jury shall be impaneled in the presence of the clerk, and shall be charged by him to make due inquest as to the particulars indicated in the two following sections.—Code of 1906, sec. 3219.

*When grand jury do not indict because of insanity, what shall be done, etc.*—When any person is held in prison or on bail charged with an offense, and the grand jury shall not find a true bill by reason of the insanity of the accused, the grand jury shall certify the fact to the circuit court, and state whether such insane person be in such condition as to endanger the security of persons or property and the peace and safety of the community. And if the grand jury report such unsoundness of mind and such danger, the court shall forthwith give notice of the case to the chancellor or clerk of the chancery court, whose duty it shall be to proceed with such person and his estate according to the law relating to persons of unsound mind.

*When acquitted because of insanity.*—When any person shall be indicted for an offense, and acquitted on the ground of insanity, the jury rendering the verdict shall state therein such ground, and whether the accused have since been restored to his reason, and whether he be dangerous to the community; and if the jury certify that such person is still insane and dangerous, the judge shall order him to be conveyed to and confined in one of the state asylums for the insane.—Code of 1906, secs. 1539 and 1540.

## MISSOURI.

*Insane, jury to try subsequent to indictment.*—If any person indicted for any crime in this state shall, after his indictment and before his trial on such charge, become insane, and the circuit or criminal court wherein such person stands charged shall have reason to believe that such person has so become insane, it shall be the duty of such court to suspend all further proceedings against such person under said charge, and to order a jury to be summoned to try and decide the question of the insanity of such person, and said judge shall notify the prosecuting attorney of the pendency of such inquiry. The alleged insane person shall be notified of such proceeding, unless the court order such person to be brought before it.

*Jury to decide insanity—costs, how paid.*—If upon such inquiry the said jury shall become satisfied that such person has so become insane, they shall so declare in their verdict, and the court shall, by proper warrant to the sheriff, marshal or jailer, order such person to be conveyed to the lunatic asylum and there kept until restored to reason. And such person shall be thereupon disposed of, and the costs and expenses of conveying him to said asylum and of his support and maintenance at said asylum shall be taxed, paid and collected as now provided by law in cases of the insane poor; *Provided,* if such person shall have property, the costs shall be paid out of his property by his guardian.

*Restored to reason, prosecution continued.*—When such person shall be restored to reason, he shall be returned to the county whence he came, and the proceedings against him shall be continued and be prosecuted, and his trial had as though no such inquiry and proceedings thereon, as hercin provided, had been made, and if upon such inquiry it shall be determined that said person has not so become insane as aforesaid, the criminal proceedings against him shall be continued and prosecuted, and his trial had in the same manner as though no such inquiry had been made and had.—Revised Statutes, 1909, secs. 5207-5209.

*Jury trial to determine sanity of person charged with crime.*—When a person, tried upon indictment for any crime or misdemeanor, shall be acquitted on the sole ground that he was insane at the time of the commission of the offense charged, the fact shall be found by the jury in their verdict, and by their verdict the jury shall further find whether such person has or has not entirely and permanently recovered from such insanity; and in case the jury shall find in their verdict that such person has so recovered from such insanity, he shall be discharged from custody; but in case the jury shall find such person has not entirely and permanently recovered from such insanity, the prisoner shall be dealt with as provided in the two following sections.

*Prisoner may be sent to hospital, when—costs to be paid from estate—to furnish superintendent copy of order.*—If the prisoner is not a poor person, and the court is satisfied, from the nature of the offense or otherwise, that it would be unsafe to permit the prisoner to go at large, an order shall be entered of record that he be sent to a state hospital, designating it, and further requiring

the sheriff or other ministerial officer of the court, with such assistance as may be specified in the order, to convey such prisoner to the hospital, after first ascertaining from the superintendent that such prisoner will be received into the hospital, and until the receipt of such information, to keep such prisoner in the county jail, poorhouse or other safe custody; and further, that the cost which may accrue in carrying into effect this order, and all expenses for the support and maintenance of such person whilst in the care and custody of the officer and at the hospital, shall be paid out of the proceeds of the estate of such person. And the court shall have power, at each succeeding term, to tax up, so long as it may be necessary, such cost and expenses as may have accrued since the preceding term, and cause the same to be levied and collected by execution; and the officer collecting the same shall pay to the treasurer of the hospital, and to such other persons as may be entitled thereto, their respective amounts due. The clerk of the court shall furnish a copy of the order of the court, under his official seal, to be lodged with the superintendent, upon the admission of the prisoner into the hospital, and issue a warrant upon said order to the officer named in said order as near as may be of the form specified in section 1424.—Revised Statutes, 1909, secs. 1430 and 1431.

## MONTANA.

Sections 9520-9526 of the Revised Codes, 1907, prescribing the method and procedure for determining whether an accused person is insane at the time of the trial are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

*Verdict.*—When the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity."—Revised Codes, 1907, part of sec. 9322.

*Proceedings on acquittal on ground of insanity.*—If the jury render a verdict of acquittal on the ground of insanity, the court may order a jury to be summoned from the jury list of the county, to inquire whether the defendant continues to be insane. The court may cause the same witnesses to be summoned who testified on the trial, and other witnesses, and direct the county attorney to conduct the proceedings, and counsel may appear for the defendant. The court may direct the sheriff to take the defendant and retain him in custody until the question of continuing insanity is determined. If the jury find the defendant insane, he shall be committed by the sheriff to the state insane asylum. If the jury find the defendant sane, he shall be discharged.—Revised Codes, 1907, sec. 9338.

## NEBRASKA.

*Proceedings where the accused becomes insane.*—A person that becomes lunatic or insane after the commission of a crime or misdemeanor ought not to be tried for the offense during the continuance of the lunacy or insanity. * * * In such case it shall be the duty of the court to impanel a jury to try the question whether the accused be, at the time of the impanelling, insane or lunatic.—Cobbey's Annotated Statutes, 1911, sec. 2614.

*Criminal insane, disposition of.*—That any person prosecuted for an offense may plead that he is not guilty by reason of insanity or mental derangement; when the defense is insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact in their verdict. The court must thereupon order the defendant to be committed to the state hospital for the insane, until he becomes sane and is discharged by due process of law. *Provided,* that the defense of insanity may be raised under a general plea of not guilty.—Cobbey's Annotated Statutes, 1911, sec. 2614x1.

*Insane entitled to benefit of habeas corpus.*—All persons confined as insane, dipsomaniacs, inebriates or as persons addicted to the excessive use of morphine, cocaine or other narcotic drugs, shall be entitled to the benefit of a writ of *habeas corpus* and the question of insanity, dipsomania, inebriety or the excessive use of morphine, cocaine or other narcotic drugs, shall be decided at the hearing, and if the judge shall decide that the person is insane, or a dipsomaniac, an inebriate or an excessive user of morphine, cocaine or other narcotic drugs, such decision shall be no bar to the issuing of a writ a second time

whenever it shall be alleged that such person has been restored to reason or has been cured from dipsomania, inebriacy or of the excessive use of morphine, cocaine or other narcotic drugs, but no court shall have jurisdiction to hear such writ until the clerk of the district court of the county in which the board of commissioners on insanity had the matter of detaining such person under consideration has been given reasonable notice of the time and place of such hearing. That upon the hearing of the writ of *habeas corpus* herein provided for, if it shall appear that the board of commissioners on insanity had jurisdiction of the patient, such patient shall not be released from custody by any court in this state except for the reason that such person has been restored to reason or cured of being a dipsomaniac, or inebriate or of the use of morphine, cocaine or other narcotic drugs. *Provided,* however, that if the proceedings of such board of commissioners are so irregular as not to justify the detention of such person, then such person shall be by order of court returned to the sheriff of the county from which committed, there to be proceeded with according to law before the board of commissioners on insanity of such county.—Cobbey's Annotated Statutes, 1911, sec. 10088.

## NEVADA.

Sections 7385-7393 of the Revised Laws of 1912 prescribing the method and procedure for determining whether an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

*Acquitted by reason of insanity, confinement in the hospital for mental diseases.*—Where on a trial a defense of insanity is interposed by the defendant and he is acquitted by reason of that defense the finding of the jury shall have the same force and effect as if he were regularly adjudged insane as now provided by law, and the judge thereupon shall forthwith order that the defendant be confined in the hospital for mental diseases until he be regularly discharged therefrom in accordance with law.—Revised Laws, 1912, sec. 7217.

## NEW HAMPSHIRE.

*Procedure when criminal pleads insanity.*—When a person is indicted for any offense, or is committed to jail on any criminal charge to await the action of the grand jury, any justice of the court before which he is to be tried, if a plea of insanity is made in court, or said justice is notified that such plea will be made, may, in term time or vacation, order such person into the care and custody of the superintendent of the state asylum for the insane, to be detained and observed by him until further order of the court, or until such person shall have been ordered discharged from said New Hampshire state hospital by its trustees upon a report to them by said superintendent that such person is not insane.—Laws of 1911, chap. 13, sec. 1.

*Insanity to be certified by grand jury.*—Whenever the grand jury shall omit to find an indictment against a person, for the reason of insanity or mental derangement, or a person prosecuted for an offense shall be acquitted by the petit jury for the same reason, such jury shall certify the same to the court.

*Admitted or found by verdict.*—Any person prosecuted for an offense may plead that he is not guilty by reason of insanity or mental derangement, and such plea may be accepted by the state's counsel, or may be found true by the verdict of the jury.

*Court may commit in case of.*—In either of the cases aforesaid, the court, if they are of opinion that it will be dangerous that such person should go at large, may commit him to the prison or to the asylum for the insane, there to remain until he is discharged by due course of law.

*May be discharged or transferred.—The* governor and council or the supreme court may discharge any such person from prison, or may transfer any prisoner who is insane to the asylum for the insane, to be there kept at the expense of the state, whenever they are satisfied that such discharge or transfer will be conducive to the health and comfort of the person and the welfare of the public.—Public Statutes and Session Laws, 1901, chap. 255, secs. 1-4.

## NEW JERSEY.

*Persons acquitted on trial upon plea of insanity; admission at expense of county.*—That when a person shall have escaped indictment, or have been acquitted of a criminal charge upon trial, on the ground of insanity, upon the plea pleaded of insanity, or otherwise, the court being certified by the jury or otherwise of the fact, shall carefully inquire and ascertain whether his insanity in any degree continues, and if it does, shall order him in safe custody, and to be sent to the hospital prescribed by the rules and regulations aforesaid; the county from which he is sent shall defray all his expenses while there, and of sending him back, if returned; but the county may recover the amount so paid from his own estate, if he has any, or from any relative or county that would have been bound to provide for and maintain him elsewhere.

*Persons confined under indictment, etc., appearing insane; admission at expense of county.*—That if any person in confinement, under indictment or for want of bail for good behavior, or for keeping the peace, or appearing as a witness, or in consequence of any summary conviction, or by order of any justice, or under any other than civil process, shall appear to be insane, the judge of the circuit court of the county where he is confined shall institute a careful investigation, call a reputable physician and other credible witnesses, invite the prosecutor of the pleas to aid in the examination, and if he shall deem it necessary, call a jury, and for that purpose is fully empowered to compel the attendance of witnesses and jurors, and if it be satisfactorily proved that he is insane, said judge may discharge him from imprisonment, and order his safe custody and removal to one of said hospitals, prescribed by the rules and regulations aforesaid, where he shall remain until restored to his right mind; and then, if the said judge shall have so directed, the medical director shall inform the said judge and the county clerk and prosecutor of the pleas thereof, whereupon he shall be remanded to prison, and criminal proceedings be resumed or otherwise discharged; the provisions of the last preceding section, requiring the county to defray the expenses of a patient sent to such hospital, shall be equally applicable to similar expenses arising under this section and the one next following.

*Persons charged with misdemeanors, acquitted on plea of insanity, sent to hospital.*—That persons charged with misdemeanors, and acquitted on ground of insanity, may be kept in custody and sent to the hospital, prescribed by said rules and regulations, in the same way as persons charged with crime.—Compiled Statutes, 1910, secs. 33-35, p. 3186.

*Discharge of criminal patients.*—That a patient of a criminal class may be discharged by order of one of the justices of the supreme court, if, upon due investigation, it shall appear safe, legal and right to make such order.—Compiled Statutes, 1910, sec. 43, p. 3188.

NOTE: The method of determining the question whether a person confined in hospital for the insane, on behalf of whom a writ of *habeas corpus* has been issued, has regained his sanity, is prescribed by sections 31 a-d, p. 2646, of the Compiled Statutes, 1910.

## NEW MEXICO

*Persons found insane, on trial for crime, how kept in custody.*—Whenever it shall appear, upon the trial of any person charged with any crime or misdemeanor, that such person was insane at the time of the commission of the same and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offense, and to declare whether he was acquitted by them on the ground of such insanity, and if they shall so find and declare, the court before whom the trial was had, shall have power to order such person to be kept in strict custody, in such place and in such manner as to the said court shall seem fit, at the expense of the county in which the trial was had, so long as such person shall continue to be of unsound mind. The same proceedings shall be had if any person indicted for an offense shall, upon arraignment, be found to be a lunatic or habitual drunkard, by a jury lawfully impaneled for the purpose, or

if upon the trial of any person so indicted, such person shall appear to the jury charged with such indictment to be a lunatic, in which case the court shall direct such finding to be recorded, and may proceed as aforesaid.—Compiled Laws, 1897, sec. 3437.

## NEW YORK

*Irresponsibility of idiot or lunatic.*—An act done by a person who is an idiot, imbecile, lunatic or insane is not a crime. A person can not be tried, sentenced to any punishment or punished for a crime while he is in a state of idiocy, imbecility, lunacy or insanity so as to be incapable of understanding the proceeding or making his defense.

A person is not excused from criminal liability as an idiot, imbecile, lunatic, or insane person, except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason as:

1. Not to know the nature and quality of the act he was doing; or,
2. Not to know that the act was wrong.—Consolidated Laws, 1909, sec. 1120 (p. 2675).

*Proceedings when person in confinement appears to be insane.*—If any person in confinement under indictment, or under a criminal charge, or for want of bail for good behavior, or for keeping the peace, or for appearing as a witness, or by order of any justice, or under any other than civil process, shall appear to be insane, a judge of a court of record of the city or county or a justice of the supreme court of the judicial district in which the alleged insane person is confined, in all cases outside the city of New York, and in all cases within the city of New York in which the maximum fine for the offense exceeds five hundred dollars or the term of imprisonment for the offense exceeds one year, shall institute a careful investigation, call two legally qualified examiners in lunacy, neither of whom shall be a physician connected with the institution in which such person so to be examined is confined, and other credible witnesses, invite the district attorney to aid in the examination, and if he deem it necessary, call a jury, and for that purpose is fully empowered to compel the attendance of witnesses and jurors, and if it be satisfactorily proved that he is insane, said judge shall discharge him from imprisonment and instead commit him to a state institution for the care, custody and treatment of the insane, where he shall remain until restored to his right mind. When an insane person, committed to a state institution in accordance with the provisions of this section, shall have been restored to his right mind, the superintendent of such institution shall inform the judge who committed the person, of the fact of his recovery, and such person shall be returned forthwith to the authority by which he was originally held in confinement; and the proceeding for which the person was in such confinement shall then be resumed.—Laws of 1910, chap. 557, part of sec. 1 (amending sec. 836 of the code of criminal procedure).

*Plea of insanity.*—Whenever a person, in confinement under indictment, desires to offer the plea of insanity, he may present such plea at the time of his arraignment, as a specification under the plea of not guilty.—Code of Criminal Procedure, sec. 336 (Birdseye's General Statutes, 1901, sec. 63, p. 1729).

[*Appointment of commission to determine whether accused was insane at time of the commission of the crime.*]—When a defendant pleads insanity, as prescribed in section three hundred and thirty-six, the court in which the indictment is pending, instead of proceeding with the trial of the indictment, may appoint a commission of not more than three disinterested persons, to examine him and report to the court as to his sanity at the time of the commission of the crime. The commission must summarily proceed to make their examination. Before commencing they must take the oath prescribed in the code of civil procedure, to be taken by referees. They must be attended by the district attorney of the county, and may call and examine witnesses and compel their attendance. The counsel of the defendant may take part in the proceedings. When the commissioners have concluded their examination, they must forthwith report the facts to the court with their opinion hereon.—Laws of 1910, chap. 557, sec. 2 (amending sec. 658 of the code of criminal procedure).

*If found insane, trial or judgment suspended.*—If the commission find the

defendant insane the trial or judgment must be suspended, until he becomes sane; and the court, if it deem his discharge dangerous to the public peace or safety, must order that he be, in the meantime, committed by the sheriff to a state lunatic asylum, and that upon his becoming sane, he be re-delivered by the superintendent of the asylum to the sheriff.—Code of Criminal Procedure, sec. 659 (Birdseye's General Statutes, 1901, sec. 176, p. 1796).

*Habeas corpus.*—Any one in custody as an insane person is entitled to a writ of *habeas carpus*, upon a proper application made by him or some friend in his behalf. Upon the return of such writ, the fact of his insanity shall be inquired into and determined. The medical history of the patient, as it appears in the case book, shall be given in evidence, and the superintendent or medical officer in charge of the institution wherein such person is held in custody, and any proper person shall be sworn touching the mental condition of such person. —Consolidated Laws, 1909, sec. 93, p. 1662.

## NORTH CAROLINA

*Criminals adjudged ta be insane, cammitted to haspital for the insane.*—All persons who may hereafter commit crime while insane, and all persons, who being charged with crime, and are adjudged to be insane at the time of their arraignment, and for that reason can not be put on trial for the crimes alleged against them, shall be sent by the court before whom they are or may be arraigned for trial, when it shall be ascertained by due course of law that such person is insane and can not plead, to the hospital for the dangerous insane, and they shall be confined therein under the rules and regulations prescribed by the board of directors under the authority of this subchapter, and they shall be treated, cared for and maintained in said hospital like patients in other state hospitals. Their confinement in said hospital shall not be regarded as punishment for any offense: *Pravided,* That no insane person who has been or may hereafter be committed to the state hospital at Morganton, Raleigh or Goldsboro shall be transferred therefrom to the hospital for the dangerous insane.

*Persans acquitted af certain crimes upan graund af insanity canfined in.*—When a person is accused of the crime of murder, attempt at murder, rape, assault with the intent to commit rape, highway robbery, train wrecking, arson or other crime, shall have escaped indictment, or shall have been acquitted upon trial upon the ground of insanity, or shall be found by the court to be without sufficient mental capacity to undertake his defense or to receive sentence after conviction, the court before which such proceedings are had shall detain such person in custody until an inquisition shall be had in regard to his mental condition. The judge shall, at the term of court at which such person is acquitted, cause notice to be given in writing to such person and his attorney, and, if in his good judgment it be necessary, to his nearest relative, naming the day upon which he shall proceed to make an inquisition in regard to the mental condition of such person. The judge shall cause such witnesses to be summoned and examined as he may deem proper or as the person so acquitted or his counsel may desire. At such inquisition the judge shall cause the testimony to be taken in writing and be preserved, and a copy of which shall be sent to the superintendent of the hospital for the dangerous insane to which such person is or has been committed. If, upon such inquisition, the judge shall find that the mental condition or disease of such person is such as to render him dangerous either to himself or other persons, and that his confinement for care, treatment, and security demands it, he shall commit such person to the hospital for dangerous insane, to be kept in custody therein for treatment and care as herein provided. Such person shall be kept therein, unless transferred under previous provisions of this chapter, until restored to his right mind, in which event it shall be the duty of the authorities having the care of such person to notify the sheriff of the county from which he came, who shall order that he appear before the judge of the superior court of the district, to be dealt with according to law. The expense incident to such commitment and removal shall be paid by the county authorities from which such patient was sent.—Revisal of 1905, secs. 4617 and 4618.

*Person acquitted of capital felony upon ground of insanity; how discharged.*—No person acquitted of a capital felony, on the ground of insanity, and committed to the hospital for the dangerous insane, shall be discharged therefrom unless an act authorizing his discharge be passed by the general assembly. No person acquitted of a crime of a less degree than a capital felony and committed to said department shall be discharged therefrom except upon an order from the governor. No person convicted of a crime, and upon whom judgment was suspended by the judge on account of insanity, shall be discharged from the said hospital except upon the order of the judge of the district, or of the judge holding the courts of the district in which he was tried: *Provided*, That nothing in this section shall be construed to prevent such person so confined in the hospitals for the dangerous insane from applying to any judge having jurisdiction for a writ of *habeas corpus*. No judge, issuing a writ of *habeas corpus* upon the application of such person, shall order his discharge, until the superintendents of the several state hospitals shall certify that they have examined such person and find him to be sane, and that his detention is no longer necessary for his own safety or the safety of the public.—Revisal of 1905, sec. 4620.

## NORTH DAKOTA

*Who capable of crime.*—Lunatics, insane persons and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.—Revised Codes, 1905, sec. 8544, 4.

Sections 10208-10215 of the Revised Codes, 1909, prescribing the method for determining whether an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

*When defense insanity, and jury acquits.*—If the defense is the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact with their verdict. The court may thereupon, if the defendant is in custody, and it deems his discharge dangerous to the public peace or safety, order him to be committed to the care of the sheriff until he becomes sane.—Revised Codes, 1905, sec. 10064.

*Acquitted for insanity; court may commit.*—When a jury has returned a verdict acquitting a defendant upon the ground of insanity, the court may thereupon, if the defendant is in custody, and it deems his discharge dangerous to the public safety, order him to be committed to the state hospital for the insane, or to the care of such person or persons as the court may direct till he becomes sane.—Revised Codes, 1905, sec. 8547.

*Insane persons entitled to habeas corpus.*—All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus*, and the question of insanity shall be decided at the hearing, and if the judge or court shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that such person shall have been restored to reason.—Revised Codes, 1905, sec. 1906.

## OHIO

*When accused was insane or an idiot at commission of offense.*—If, before the indictment of a person confined in jail charged with an offense, notice in writing is given by a citizen to the sheriff or jailer that such person was insane or an idiot at the time the offense was committed, or has since become insane, such sheriff or jailer shall forthwith give the notices and an examining court shall be held as provided in the next preceding section. If such judge find that such person was an idiot when he committed the offense, or was then or still is insane, or afterward became and still is insane, he shall, at his discretion, proceed as required by law after inquest held.—General Code, 1910, sec. 13531.

*Grand jury finding accused insane.*—If a grand jury upon investigation of a person accused of crime finds such person to be insane, it shall report such finding to the court of common pleas. Such court shall order a jury to be impaneled to try whether or not the accused is sane at the time of such impan-

eling, and such court and jury shall proceed in a like manner as provided by law when the question of the sanity of a person indicted for an offense is raised at any time before sentence. If such person is then found to be insane, he shall be committed to the Lima state hospital until restored to reason. This section shall not be in force and effect until the Lima state hospital is ready for the reception of inmates as certified to the courts by the governor and secretary of state.—General Code, 1910, sec. 13577.

*Whether accused is insane may be tried to a special jury.*—When the attorney of a person indicted for an offense suggests to the court in which such indictment is pending, and before sentence, that such person is not then sane and a certificate of a reputable physician to that effect is presented to the court, such court shall order a jury to be impaneled to try whether or not the accused is sane at the time of such impaneling. Thereupon a time shall be fixed for a trial, a jury shall be drawn from the jury-box and a venire issued, unless the prosecuting attorney or the attorney of the accused demand a struck jury, in which case such jury shall be selected and summoned as required by law. The jury shall be sworn to try the question whether the accused is or is not sane, and a true verdict give according to the law and the evidence, and, on the trial, the accused shall hold the affirmative.

*Verdict by three-fourths of jury.*—If three-fourths of the jurors provided for in the next preceding section, agree upon a verdict, their finding may be returned as the verdict of such jury, and a new trial may be granted on the application of the attorney of the accused, for the causes and in the manner provided in this title.

*Proceedings on verdict of such jury.*—If three-fourths of the jurors do not agree, or the verdict is set aside, another jury shall be impaneled to try the question. If the jury find the accused to be sane and no trial has been had on the indictment, a trial shall be had thereon as if the question had not been tried. If the jury find him to be not sane, that fact shall be certified by the clerk to the probate court, and the accused, until restored to reason, shall be dealt with by such court as upon inquest had. If he is discharged, the bond given for his support and safe-keeping shall contain a condition that, when restored to reason, he shall answer to the offense charged in the indictment, or of which he has been convicted, at the next term of the court thereafter and abide the order of such court.—General Code, 1910, secs. 13608-13610.

*Proceedings when accused is acquitted on the sole ground of insanity.*—When a person tried upon an indictment for an offense is acquitted on the sole ground that he was insane, such fact shall be found by the jury in the verdict, and certified by the clerk to the probate court. Such person shall not be discharged, but forthwith delivered to the probate court, to be proceeded against upon the charge of lunacy, and the verdict shall be *prima facie* evidence of his insanity.—General Code, 1910, sec. 13612.

*Benefit of habeas corpus.*—All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus*, and the question of insanity must be decided at the hearing. If the judge decides that such person is insane, the decision shall be no bar to the issuing of the writ a second time, if it is alleged that such person has been restored to reason.—General Code, 1910, sec. 1976.

## OKLAHOMA.

*Insane; idiot.*—The term "insane" as used in this act includes any species of insanity or mental derangement. The term "idiot" is restricted to persons supposed to be naturally without mind. No idiot will be admitted into the hospital for the insane.—General Statutes, 1908, sec. 3326.

Sections 2425-2433 of the General Statutes, 1908, prescribing the method and procedure for determining whether an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

*Defense of insanity and acquittal.*—If the defense is the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact with their verdict. The court may thereupon, if the defendant is in

custody and they deem his discharge dangerous to the public peace or safety, order him to be committed to the care of the sheriff until he becomes sane.—General Statutes, 1908, sec. 2197.

*Release of persons alleged not to be insane.*—On a statement in writing, verified by affidavit, addressed to the judge of the county in which the hospital is situated, or of the county in which any certain person confined in the hospital has his or her legal settlement, alleging that such person is not insane and is unjustly deprived of his or her liberty, such judge shall appoint a commission of not more than three persons in his discretion to inquire into the merits of the case, one of whom shall be a physician; and if two or more are appointed, another shall be an attorney. Without first summoning the party to meet them, they shall proceed to the hospital and have a personal interview with such person, so managed so as to prevent him or her, if possible, from suspecting its object; and they shall make any inquiries or examinations they may deem necessary and proper of the officers and records of the hospital, touching the merits of the case. If they shall deem it prudent and advisable they may disclose to the party the object of their visit, and in the presence of such party make further investigation of the matter. They shall forthwith report to the judge making the appointment, the result of their examinations and inquiries. Such report shall be accompanied by a statement of the case and signed by the superintendent. If on such report and statement and the hearing of the testimony, if any is offered, the judge shall find the person not insane, he shall order his or her discharge. If on the contrary, he shall so state, and authorize his or her continued detention. The finding and order of the judge, with the report and other papers, shall be filed in his office and entered on his records, and he shall forthwith notify the superintendent of his finding and order, and the superintendent shall carry out the order. The commissioners appointed as provided in this section shall be entitled to their necessary expenses, and a reasonable compensation to be allowed by said judge, and paid by the state out of any funds not otherwise appropriated; *Provided,* that the applicant shall pay the same if the judge shall find that the application was made without probable grounds, and shall so order.—General Statutes, 1908, sec. 3321.

*Insane persons entitled to habeas corpus.*—All persons confined as insane shall be entitled to the benefit of the writ of *habeas corpus,* and the question of insanity shall be decided at the hearing, and if the judge or court shall decide that the person is insane, such decision shall be no bar to the issuing of the writ the second time whenever it shall be alleged that such person has been restored to reason.—General Statutes, 1908, sec. 3323.

## OREGON.

*Insanity must be proven.*—When the commission of the act charged as a crime is proven, and the defense sought to be established is the insanity of the defendant, the same must be proven beyond a reasonable doubt.—Lord's Oregon Laws, 1910, sec. 1527.

*Proceedings, when defendant acquitted on account of insanity.*—If the defense be the insanity of the defendant, the jury must be instructed, if they find him not guilty on that ground, to state that fact in their verdict, and the court must thereupon, if it deems his being at large dangerous to the public peace or safety, order him to be committed to any lunatic asylum authorized by the state to receive and keep such persons, until he become sane, or be otherwise discharged therefrom by authority of law.—Lord's Oregon Laws, 1910, sec. 1558.

*Court may commit insane criminals.*—The courts of this state shall have power to commit to the care of said contractors any person who may have been charged with an offense punishable by imprisonment or death who shall have been found to be insane or idiotic, and who shall continue to be insane or idiotic.—Lord's Oregon Laws, 1910, sec. 4441.

Note to sec. 4441. At the time this section was passed (1862) insane and idiotic persons were kept under contract by private individuals, who owned the asylum.



*Where prisoner brought up to be discharged appears to be insane.*—In every case in which any person charged with any offense shall be brought before the court to be discharged for want of prosecution, and shall by the oath or affirmation of one or more credible persons, appear to be insane, the court shall order the district attorney to send before the grand jury a written allegation of such insanity, in the nature of a bill of indictment; and thereupon the said grand jury shall make inquiry into the case, as in cases of crimes, and make presentment of their finding to said court thereon; and thereupon the court shall order a jury to be impaneled to try the insanity of such person; but before a trial thereof be ordered, the court shall direct notice thereof to be given to the next of kin of such person, by publication or otherwise, as the case requires, and if the jury shall find such person to be insane, the like proceedings may be had as aforesaid.—Purdon's Digest, 1905, sec. 80, p. 2403.

[*Verdict and commitment.*]—In every case in which it shall be given in evidence, upon the trial of any person charged with any crime or misdemeanor, that such person was insane at the time of the commission of such offense, and he shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offense, and to declare whether he was acquitted by them on the ground of such insanity; and if they shall so find and declare, the court before whom the trial is had shall have power to order him to be kept in strict custody, in such place and in such manner as to the said court shall seem fit, at the expense of the county in which the trial is had, so long as such person shall continue to be of unsound mind.

*Where he is found insane upon arraignment.*—The same proceedings may be had, if any person indicted for an offense shall, upon arraignment, be found to be a lunatic, by a jury lawfully impaneled for the purpose, or if, upon the trial of any person so indicted, such person shall appear to the jury, charged with such indictment, to be a lunatic, the court shall direct such finding to be recorded, and may proceed as aforesaid.—Purdon's Digest, 1905, secs. 78 and 79, p. 2403.

*Courts may commit insane criminals.*—The courts of this commonwealth shall have power to commit to said asylum (Pennsylvania state lunatic hospital), any person who, having been charged with an offense punishable by imprisonment or death, shall have been found to have been insane, in the manner now provided by law, at the time the offense was committed, and who still continues insane; and the expense of said persons, if in indigent circumstances, shall be paid by the county to which he or she may belong by residence.—Purdon's Digest, 1905, sec. 78, p. 2371.

*Persons acquitted of certain heinous offenses on the ground of insanity, not to be sent to the asylum.*—No person shall hereafter be sent to the said lunatic hospital (Pennsylvania state lunatic hospital), under the 10th section of the act of the 14th of April, 1845, or any other law of this commonwealth, who shall have been charged with homicide, or having endeavored or attempted to commit the same, or to commit any arson, rape, robbery or burglary, and have been acquitted of any such offenses on the ground of insanity, or been proceeded against under the 59th or 60th section of the act of the 13th of June, 1836, relative to lunatics and habitual drunkards, where the court trying such person, or hearing the case, shall be satisfied that it is dangerous for said lunatic to be at large, on account of having committed, or attempted to commit, either of the crimes aforesaid, but such persons shall be continued in the penitentiary of the proper district, or the prison of the county; *Provided,* that said court shall still have power to order any such person to be confined in the said lunatic hospital if, on full examination, it shall be satisfied that there is reason to believe that a cure of the insanity may be speedily effected by sending him or her thereto.—Purdon's Digest, 1905, sec. 89, p. 2373.

[*Discharge of persons acquitted on the ground of insanity*].—If, after a confinement of three months' duration, any law judge shall be satisfied by the evidence presented to him that the prisoner has recovered, and that the paroxysm of insanity in which the criminal act was committed was the first and

only one he had ever experienced, he may order his unconditional discharge. If, however, it shall appear that such paroxysm of insanity was preceded by at least one other, then the court may, in its discretion, appoint a guardian of his person, and to him commit the care of his prisoner; said guardian giving bond for any damage his ward may commit; *Provided always,* that in case of homicide or attempted homicide, the prisoner shall not be discharged, unless in the opinion of the superintendent and three-fourths of the managers of the hospital and the court before which he or she was tried, he or she has recovered and is safe to be at large.—Purdon's Digest, 1905, sec. 5, p. 2359.

*Habeas corpus to lie for such persons.*—On a written statement, properly sworn to or affirmed being addressed by some respectable person to any law judge, that a certain person then confined in a hospital for the insane is not insane, and is thus unjustly deprived of his liberty, the judge shall issue a writ of *habeas corpus,* commanding that the said alleged lunatic be brought before him for a public hearing, where the question of his or her alleged lunacy may be determined, and where the onus of proving the said alleged lunatic to be insane shall rest upon such persons as are restraining him or her, of his or her liberty.—Purdon's Digest, 1905, sec. 3, p. 2359.

## RHODE ISLAND.

*Person under indictment acquitted because insane.*—Whenever, on the trial of any person upon an indictment, the accused shall set up in defense thereto his insanity, the jury, if they acquit such person upon such ground, shall state that they have so acquitted him; and if the going at large of the person so acquitted shall be deemed by the court dangerous to the public peace, the court shall certify its opinion to that effect to the governor, who, upon the receipt of such certificate, may make provision for the maintenance and support of the person so acquitted, and cause such person to be removed to the prison insane ward, the state hospital for the insane, or other institution for the insane during the continuance of such insanity.—Laws of 1910 (Aug. sess.), chap. 642, sec. 1.

*Justice of Supreme Court may examine prisoners alleged to be insane.*—On the petition of the agent of state charities and corrections, or of the officer having the custody of any person awaiting trial or imprisoned in any county of the state, setting forth that such person is insane, any justice of the supreme court may make such an examination of said person as in his discretion he shall deem proper.

*And may order their removal.*—If, upon such examination, said justice is satisfied that the person thus imprisoned is insane or idiotic, he may order the removal of such prisoner from the jail aforesaid to the state asylum for the insane, if he can be there received; if not, to the Butler Hospital for the insane.

*May remand persons so removed to place of original confinement.*—Any person removed as aforesaid, upon restoration to reason, may, by order of any of the justices of the supreme court, in his discretion, be remanded to the place of his original confinement, to await his trial for the offense for which he stands committed.—General Laws, 1909, title XIII, secs. 35-37.

## SOUTH CAROLINA.

*Degree of insanity necessary for confinement in state hospital for the insane.*—A person shall be considered insane or fit to be a patient in the hospital who exhibits in the first place such a degree of brain disability or mental aberration as to render him or her dangerous to others or dangerous to his or her own life or person, or dangerous to property; in the second place, this disability must not be transient like delirium in a fever, but of a more or less permanent character; in the third place, lack or loss of mental ability to properly conduct his or her usual work or business shall be considered along with aberrant conduct in determining the question of a person's insanity.—Code of Laws, 1902, part of sec. 2249.

*When judges may send persons to hospital in criminal cases; support of.*—Any judge of the circuit court is authorized to send to the state hospital for the insane every person charged with the commission of any criminal offense who shall, upon the trial before him, prove to be *non compos mentis;* and the said

judge is authorized to make all necessary orders to carry into effect this power. Where the person so sent is not a pauper, he shall be supported out of his own estate, according to the regulations to be prescribed by the court, as on a writ of *de lunatico inquirenda*.—Code of Laws, 1902, sec. 2264.

## SOUTH DAKOTA.

*Wha are capable af cammitting crimes*.—Lunatics, insane persons, and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.—Penal Code, 1903, sec. 16, 4.

Sections 544-551 of the Code of Criminal Procedure, 1903, prescribing the method for determining when an accused person is insane at the time of the trial, are practically the same as sections 1367-1372 of the Penal Code of California, 1901.

*Defense af insanity and acquittal*.—If the defense is the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact with their verdict. The court may thereupon, if the defendant is in custody, and it deems his discharge dangerous to the public peace or safety, order him to be committed to the care and custody of the hospital for insane until he becomes sane.—Laws of 1911, chap. 171.

*Insane person entitled ta habeas corpus*.—All persons confined as insane shall be entitled to the benefit of the writ of *habeas carpus*, and the question of insanity shall be decided at the hearing, and if the judge or court shall decide that the person is insane, such decision shall be no bar to the issuing of the writ the second time, whenever it shall be alleged that such person has been restored to reason.—Political Code, 1903, sec. 2826.

## TENNESSEE.

*Persan accused af crime faund insane*.—When, upon the arraignment of any person not previously known or believed to be insane, who may be charged with a criminal offense punishable by imprisonment in the penitentiary or death, the plea of present insanity is urged in his or her behalf, the court shall charge the jury that if, from the evidence, they believe the defendant to be insane, they shall so find; but the powers of courts to commitment to the hospital for the insane shall not extend to insane persons arraigned for felonious assaults or misdemeanors only, or those who, by reason of their insane condition, may be admissible to the hospitals for the insane under the general laws of commitment provided therefor.—Code of 1896, sec. 2631.

[*Insanity af indicted persan*].—If the court in which a person is indicted for a criminal offense is satisfied that he is *nan compas mentis*, and he has been so for four successive terms, it may discharge him from custody upon the recognizance of good and sufficient sureties, acknowledged before the court, for his personal appearance at the next succeeding term, in such sum as the court may direct. And the court may renew the recognizance from term to term, in its discretion, so long as the defendant continues under the disability.—Code of 1896, sec. 7439.

## TEXAS.

*Insanity a defense*.—No act done in a state of insanity can be punished as an offense. No person who becomes insane after he committed an offense shall be tried for the same while in such condition. No person who becomes insane after he is found guilty shall be punished for the offense while in such condition.—Penal Code, 1911, title I, chap. 3, art. 39.

*Proaf af insanity accarding ta camman law*.—The rules of evidence known to the common law in respect to the proof of insanity shall be observed in all trials where that question is in issue.—Penal Code, 1911, title I, chap. 3, art. 40.

*Acquittal far insanity*.—When the defendant is acquitted on the ground of insanity, the jury shall so state in their verdict.—Code of Criminal Procedure, 1911, title 8, chap. 6, art. 780.

## UTAH.

Sections 5052-5059 of the Compiled Laws, 1907, prescribing the method and procedure for determining whether an accused person is insane at the time of the trial, are the same as sections 1367-1372 of the Penal Code of California, 1901.

## VERMONT.

*Commitment for observation.*—When a person is indicted for a criminal offense, or is committed to jail on a criminal charge by a justice, municipal or city court, the presiding judge of the county court before whom said person is to be tried, may, in term time or vacation, if a plea of insanity is made in court or if he is satisfied that a plea of insanity will be made, order said person into the care of the superintendent of the Vermont state hospital for the insane, to be detained and observed by said superintendent until further order of said judge or of such county court, that the truth or falsity of such plea may be ascertained.

*When person is not indicted because insane.*—When a person held in prison on a charge of having committed an offense is not indicted by the grand jury by reason of insanity, the grand jury shall so certify to the court, and thereupon, if the discharge or going at large of said insane person is considered dangerous to the community, the court may order him confined in the county jail, or in the Vermont state hospital for the insane, or some other suitable place, at his own expense, if he has estate sufficient for that purpose, and if not at the expense of the state.

*On acquittal by reason of insanity.*—When a person tried on a complaint, information or indictment for a crime or offense is acquitted by the jury by reason of insanity, the jury, in giving its verdict of not guilty, shall state that it is given for such cause, and thereupon, if the discharge or going at large of said insane person is considered dangerous to the community, the court may order him, in its discretion, to be confined in the state prison, or in the Vermont state hospital for the insane, or in some other suitable place, on such terms as the court directs, and at his own expense, if he has sufficient estate for that purpose, and if not, at the expense of the state.

*Insane respondent may petition county court for discharge.*—A person confined under an order of court, pursuant to the two preceding sections, shall be discharged from confinement only by order of the county court for the county in which the order for confinement was made, upon petition therefor, made returnable to a stated term of such court, and served upon the state's attorney for that county at least twelve days before the beginning of the term. This section shall not affect the right of a person so confined to sue out a writ of *habeas corpus.*—Public Statutes, 1906, sec. 2327-2330.

*Court may discharge or recommit him.*—If, upon hearing, it appears that said person has become sane, and the court considers that his release or going at large is not dangerous to the community, it shall order his discharge from confinement; otherwise the petition shall be dismissed and said person, if before the court, shall be recommitted to the place of confinement from which he was brought.—Public Statutes, 1906, sec. 2334.

*Transfer of prisoner in jail awaiting trial.*—When a person is under arrest charged with an offense punishable by death or imprisonment in the state prison or house of correction, if it appears to the governor that such person is insane and in need of treatment therefor, he may by order in writing, direct the officer having such person in custody to remove him to the Vermont state hospital for the insane, pending proceedings upon such charge.—Public Statutes, 1906, part of sec. 6084.

*Expert evidence.*—A superior judge or the attorney general may, to prevent a failure of justice, order an examination to be made by an expert or experts, either within or without the state, in the investigation of a crime supposed to have been committed within the state. Such order shall be made only on the petition of the state's attorney for the county in which the crime is supposed to have been committed, setting forth the facts because of which

the order is applied for, and verified by affidavit, and shall name the expert or experts by whom the examination is to be made, and limit the expense of the examination; and such expense shall be paid in the manner provided for the payment of witness fees in state causes in the county court.—Public Statutes, 1906, sec. 2345.

## VIRGINIA

*Admission [to asylum] of persons charged with crime.*—If any person who is charged with, or indicted for, any crime be found, in the court in which he is so charged or indicted, to be insane at the time appointed for trial of such indictment, the court shall order him to be committed to the department for the criminal insane at the proper hospital, where he shall be kept in custody and cared for until he has been restored to sanity. If, prior to the time for trial of any persons under complaint or indictment for any crime, either the court or the attorney for the commonwealth has reason to believe that such person is in such mental condition that his confinement in a hospital for the insane is necessary for proper care and observation, the said court may commit such person to the department for the criminal insane under such limitations as it may order pending the determination of his mental condition; and in such case the court, in its discretion, may appoint one or more experts in insanity, or other qualified physicians, not to exceed three, to examine the defendant before such commitment is ordered, and make such investigation of the case as they may deem necessary, and report to the court the condition of the defendant at the time of their examination. Fees commensurate with the professional service rendered, and to be fixed by the court, together with necessary expenses, shall be audited and paid the experts or physicians, as in the case of other court expenses. A copy of the complaint or indictment, attested by the clerk, together with the medical report, shall be delivered with such person to the superintendent of the hospital to which he shall have been committed under the provisions of this act. If any such person so removed to the department for the criminal insane at the proper state hospital is in the opinion of the superintendent, not insane, or when such person, if insane, has been restored to sanity, he shall forthwith be brought back to the jail or custody from which he was removed, where he shall be held in accordance with the terms of the process by which he was originally committed or confined.—Acts of Assembly, 1910, chap. 320 (amending sec. 1682 of the Code of 1887).

*Verdict of acquittal by reason of insanity, to state the fact; accused to be sent to asylum.*—When a person tried for an offense is acquitted by the jury by reason of his being insane, the verdict shall state the fact; and thereupon the court shall order him to be sent to one of the asylums, or, if it deems him dangerous, order him to be committed to jail until he can be sent.—Code of 1887, sec. 4035.

*Disposition of lunatic charged with crime when restored to sanity.*—When any person, confined in the department for the criminal insane at the proper hospital and charged with crime, and subject to be tried therefor, or convicted for crime, shall be restored to sanity, the superintendent shall give notice thereof to the clerk of the court by whose order he was confined, and deliver him in obedience to the proper precept: *Provided,* No person who has been convicted for a crime punishable by death shall be so delivered until the said superintendent and the superintendent of one of the other state hospitals for the insane, to be designated by the commissioner of state hospitals, concur in the opinion that the said person has been restored to sanity. When any person, charged with or indicted for any offense which may be punishable by death, has been adjudged insane, both at the time of the offense and at the time when, but for such insanity, he would have been tried, shall be ordered by the court to be committed to the department for the criminal insane, at the proper hospital, such person shall not be discharged therefrom until the superintendent of that hospital and the superintendent of two of the other hospitals, designated by the commissioner of state hospitals, shall be satisfied, after a thorough examination, that such person has been restored to sanity and may be discharged without danger to others, and provided such discharge is given upon

the consent and advice of the commissioner of state hospitals and the special board of directors.—Acts of Assembly, 1910, chap. 321 (amending sec. 1687 of the Code of 1887).

[*Determination of sanity upon writ of habeas corpus*].—Any person held in custody as insane may by means of a writ of *habeas corpus* have the question of the legality of his detention and of his sanity determined by a court of competent jurisdiction. If such person be not held in custody, then he may file his petition in the circuit court of the county or city in which he resides, or in which he was adjudged insane, or before the judge thereof in vacation, and upon such petition, after notice to the authorities of the hospital or to the person claiming the right to the custody of such adjudged insane person, such court or judge thereof in vacation shall determine whether such person be sane or insane.—Acts of Assembly, extra session, 1902-3-4, chap. 139, page 128 (amending sec. 1675 of the Code of 1887).

## WASHINGTON

*Exemptions from being committed as insane.*—No case of idiocy, imbecility, harmless chronic mental unsoundness, or acute *mania a potu* shall be committed to the hospital for the insane.—Ballinger's Annotated Statutes, 1897, sec. 2666.

*Commitment of arraigned person.*—The superior courts of the state shall have power to commit to the hospital for the insane any person who, having been arraigned for an indictable offense, shall be found by the jury to be insane at the time of such arraignment, and the costs of such commitment shall be paid in the same manner.—Ballinger's Annotated Statutes, 1897, sec. 2664.

*Criminal insane defined.*—Any person who shall have committed a crime while insane, or in a condition of mental irresponsibility, and in whom such insanity or mental irresponsibility continues to exist, shall be deemed criminally insane within the meaning of this act. No condition of mind induced by the voluntary act of a person charged wth a crime shall be deemed mental irresponsibility within the meaning of this act.

*Plea of insanity.*—When it is desired to interpose the defense of insanity or mental irresponsibility on behalf of one charged with a crime, the defendant, his counsel or other person authorized by law to appear and act for him, shall at the time of pleading to the information or indictment file a plea in writing in addition to the plea or pleas required or permitted by other laws than this, setting up (1) his insanity or mental irresponsibility at the time of the commission of the crime charged, and (2) whether the insanity or mental irresponsibility still exists, or (3) whether the defendant has become sane or mentally responsible between the time of the commission of the crime and the time of the trial. The plea may be interposed at any time thereafter, before the submission of the cause to the jury if it be proven that the insanity or mental irresponsibility of the defendant at the time of the crime was not before known to any person authorized to interpose a plea.

*Verdict.*—If the plea of insanity or mental irresponsibility be interposed, and evidence upon that issue be given, the court shall instruct the jury when giving the charge, that in case a verdict of acquittal of the crime charged be returned, they shall also return special verdicts finding (1) whether the defendant committed the crime and if so, (2) whether they acquit him because of his insanity or mental irresponsibility at the time of its commission, (3) whether the insanity or mental irresponsibility continues and exists at the time of the trial, and (4) whether, if such condition of insanity or mental irresponsibility does not exist at the time of the trial, there is such likelihood of a relapse or recurrence of the insane or mental irresponsible condition, that the defendant is not a safe person to be at large. Forms for the return of the special verdicts shall be submitted to the jury with the forms for the general verdicts.

*Discharge.*—If the jury find by their special verdicts that the defendant committed the crime charged, that he is acquitted because of his insanity or mental irresponsibility at the time of its commission, and that before the trial he has become a sane or mentally responsible person, and is not liable to a relapse or recurrence of the insane or mentally irresponsible condition, and is a safe person to be at large, he shall be discharged. If the jury find that the

defendant committed the crime charged, that he is acquitted because of his insanity or mental irresponsibility at the time of its commission, and that the insanity or mental irresponsibility still exists, or, if it does not exist, that he is so liable to a relapse or recurrence of the insane or mentally irresponsible condition as to be an unsafe person to be at large, the court shall enter judgment in accordance therewith, and shall order the defendant committed as a criminally insane person until such time as he shall be discharged as hereinafter provided.

*Statement of facts.*—Either party to the cause may have the evidence and all of the matters not of record in the cause made a part of the record by the certifying of a statement of facts or bill of exceptions as in other cases. If an appeal should be not taken, such statement of facts or bill of exceptions shall remain on file in the office of the clerk of the court where the cause was tried, and if an appeal be taken, the statement of facts or bill of exceptions shall be returned from the supreme court to the court where the cause was tried when the supreme court shall have rendered its final judgment in the cause.

[*Discharge from insane hospital*].—When any person committed hereunder shall claim to have become sane or mentally responsible and to be free from danger of any relapse or recurrence of mental unsoundness and a safe person to be at large, he shall apply to the physician in charge of the criminal insane for an examination of his mental condition and fitness to be at large. If the physician shall certify to the warden that there is reasonable cause to believe that such person has become sane since his commitment and is a safe person to be at large, the warden shall permit him to present a petition to the court that committed him, setting up the facts leading to his commitment, and that he has since become sane and mentally responsible, and is in such condition that he is a safe person to be at large, and shall pray his discharge from custody. The petition shall be served upon the prosecuting attorney of the county, whose duty it shall be to resist the application. No other pleadings than the petition need be filed, and the court shall set the cause down for trial before a jury, and the trial shall proceed as in other cases. The sole issue to be tried in the case shall be whether the person petitioning for a discharge has, since his commitment, become a safe person to be at large, and the burden of proof shall be upon him. If the evidence given upon his trial upon the criminal charge shall have been preserved by statement of facts or bill of exceptions as hereinbefore provided, either party may read such parts of that record as may be desired as evidence upon the hearing. The jury shall be required to find whether the petitioner has become sane since his commitment, is not liable to a recurrence of the mental unsoundness or relapse, and is a safe person to be at large. If they so find, he shall be entitled to a discharge. If not, his petition shall be dismissed, and he shall be remitted to custody. Either party may appeal to the supreme court from the judgment discharging the petitioner or remitting him to custody, in the same manner that appeals in other cases are taken. The judgment of remission shall be conclusive that the petitioner is an unsafe person to be at large at the time of its entry; but if he shall subsequently claim to have become a sane and safe person, to be at large, he may upon a certificate of probable cause by the attending physician, which shall show a change in his mental condition since the last trial, his present sanity and fitness to be at large, again petition for discharge, and the proceedings thereon shall be as hereinabove provided.—Laws of 1907, chap. 30, secs. 1-6.

## WEST VIRGINIA

[*Inquiry regarding sanity of accused person*].—If a court in which a person is indicted for a criminal offense, see reasonable ground to doubt his sanity at the time at which but for such doubt he would be tried, it shall suspend the trial until a jury inquire into the fact of such sanity. Such jury shall be impaneled at its bar. If the jury find the accused to be sane at the time of their verdict, they shall make no further inquiry, and the trial in chief shall proceed. If they find that he is insane they shall inquire whether he was so at the time of the alleged offense. If they find that he was so at that time, the court may dismiss the prosecution, and either discharge him or to prevent his

doing mischief, remand him to jail, and order him to be removed thence to the hospital for the insane. If they find he was not so at that time, the court shall commit him to jail, or order him to be confined in said hospital until he is so restored that he can be put upon his trial.—Code of 1899, chap. clix, sec. 10.

*Verdict and commitment.*—When a prisoner tried for an offense is acquitted by the jury, by reason of his being insane, the verdict shall state the fact; and thereupon the court may, if it deem him dangerous, order him to be committed to jail until he can be sent to the hospital for the insane.—Code of 1899, chap. clix, sec. 14.

## WISCONSIN

*Proceedings if accused insane at trial.*—When any person is indicted or informed against for any offense if the court shall be informed, in any manner, that there is a probability that such accused person is, at the time of his trial, insane and thereby incapacitated to act for himself, the court shall, in a summary manner, make inquisition thereof by a jury or otherwise as it deems most proper; and if it shall be thereby determined that such accused person is so insane his trial for such offense shall be postponed indefinitely, and the court shall thereupon order that he be confined in one of the state hospitals for the insane, and the superintendent of such hospital shall receive such insane person upon such order and confine and treat him in such hospital as other insane persons are kept and treated therein; and upon the recovery of such person from his insanity the said superintendent shall notify the sheriff of the county in which such indictment or information shall be pending of such recovery, and said sheriff shall thereupon take such accused person into his custody, and he shall be committed to the county jail of said county or held to bail for his appearance at the next succeeding term of said court for trial for such offense; but in case it shall be determined by the proper authorities of said hospital that the insanity of such accused person is incurable he shall then be treated and disposed of as other cases of incurable insanity according to law.—Statutes of 1898, sec. 4700.

*Trial of question of insanity.*—When any person is indicted or informed against for any offense and such person or counsel in his behalf shall, at the time and before the commencement of the trial, claim or pretend that such person, at the time of the commission of such alleged offense, was insane and for that reason was not responsible for his acts, the court shall order a special plea, setting up and alleging such insanity, to be filed on his behalf with the plea of not guilty; and the special issue thereby made shall * * * * * * * be tried * * * * *and determined by the jury with the plea of not guilty;* and if such jury shall find upon such special issue that such accused person was so insane or that there is reasonable doubt of his sanity at the time of the commission of such alleged offense, they shall * * * return a verdict of *not guilty because insane.* The presumption of such accused person's sanity, at the time of the commission of such alleged offense, shall prevail and be sufficient proof thereof on the trial of such special issue, * * *, unless the evidence produced on such trial shall create in the minds of the jury a reasonable doubt of the sanity of such accused person at the time of the commission of such alleged offense. If the defenadnt shall be found by the jury "not guilty because insane," he shall forthwith be committed by the court to one of the state hospitals for the insane, there to be detained and treated until he shall be discharged according to law. A re-examination of his sanity may be had as in the case of other patients, but no such person so committed shall be discharged from detention unless the magistrate or the jury upon whom devolves the duty to pass upon his sanity shall in addition to finding him sane also find that he is not likely to have such a recurrence of insanity as would result in acts which, but for insanity, would constitute crimes.—Laws of 1911, chap. 221 (amending sec. 4697 of the Statutes of 1898).

*Commitment of accused persons.*—The several courts of record in this state may commit for safe keeping and treatment to either hospital for the insane any person who shall be under charge of or convicted before such court of any crime punishable by imprisonment in the state prison and awaiting hearing,

trial, conviction or sentence on account of alleged insanity at the time of the commission of such crime or at any time afterwards and prior to sentence.—Statutes of 1898, part of sec. 596.

*Hobeos corpus.*—All person confined in either hospital as insane patients, except persons charged with or convicted of crime and confined therein on the order of any court as provided in the next following section, shall be entitled to the benefit of the writ of *hobeas corpus,* and the question of insanity shall be determined by the court or judge issuing such writ; and if such court or judge shall decide that the person is insane such decision shall be no bar to the issuing of said writ a second time if it shall be claimed that such person, not being so confined in pursuance of the order of any such court, has been restored to reason.—Supplement of Statutes, 1906, sec. 595.

*Discharge from osylum.*—"Upon the receipt by the judge of the circuit court or any judge of any other court of record of the county in which any insane person is confined, or the county from which he was committed, of a petition verified by the oaths of any resident of the county wherein such circuit judge holds court or in which such other judge resides, setting forth that the person in whose behalf the petition is filed has theretofore been adjudged insane and alleging that such person is now believed by petitioner to be sane and requesting a judicial examination as to that fact, and further stating whether or not such person has a general guardian, and if he has, the name and residence of such guardian, such judge shall by order appoint two disinterested physicians, of good repute *ond residents of the county,* to examine and report to him whether in their opinion the person named in such petition is sane or insane. If such person has such a guardian the judge shall at the time he appoints such physicians, cause notice of the time and place of making such examination to be served upon him, and such general guardian or any relative or friend of the person to be examined may appear at such examination. If such physicians report such person sane and the judge is satisfied that he is sane and no demand for a jury trial is made, a judgment to that effect shall forthwith be entered; but if the judge shall direct, or the person examined, his guardian or any of such person's friends or relatives shall demand, a trial by jury, an order for such a trial shall forthwith be entered. After hearing the evidence and arguments the jury shall return a verdict of sane or insane as they agree; if they disagree they shall be discharged and another jury may be impaneled. Judgment shall be entered in accordance with the fact found by the jury; if they find that the person is insane the judge shall make a further order of commitment to some hospital or asylum, or not, as in his judgment the facts warrant."—Statutes of 1898, sec. 587 (portion).

## WYOMING

*Complaint ond triol [as to insanity of occused person].*—If any person accused of or convicted of any crime, misdemeanor or offense against the laws of this state, or against the laws of the late territory of Wyoming, shall be confined in any penitentiary, county jail of any county, or other place of confinement, awaiting trial, or who is confined therein under and pursuant to the sentence or judgment of any court or justice of the peace in this state, and is of unsound mind, any officer or person having such person of unsound mind in his charge shall, and any citizen of this state may, make complaint thereof, and the question of the sanity of such person shall be inquired of, tried and determined under and according to the law of this state providing for and regulating trials, inquisitions, and proceedings in cases of inquiry into the sanity of other persons of unsound mind.

[*Care of accused or convicted person, who is insone*].—If any such person accused of or convicted of any crime, misdemeanor or offense shall be found of unsound mind or insane upon such inquiry, trial or proceeding, he or she shall be forthwith taken to such place or places for treatment as shall be provided for or prescribed by the state board of charities and reform either generally, or for that particular case, and it shall be the duty of any and all persons, boards, superintendents, officers and employees of the place so designated by

such board, to receive the same person into custody, and to treat him or her according to the regulations and practice of such place or institution.

*Disposition of person upon recovery of reason.*—If any person or patient so confined in any hospital or asylum or place designated by the said board of charities and reform shall recover his or her reason, he or she shall be returned to the penitentiary, county jail or other place of confinement or imprisonment where such person was confined at the time of such inquiry, trial or proceeding to determine his or her sanity or insanity, there to be tried or serve out or undergo his or her term of imprisonment if any part thereof remains, as the nature of the case shall require.—Compiled Statutes, 1910, secs. 469-471.

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